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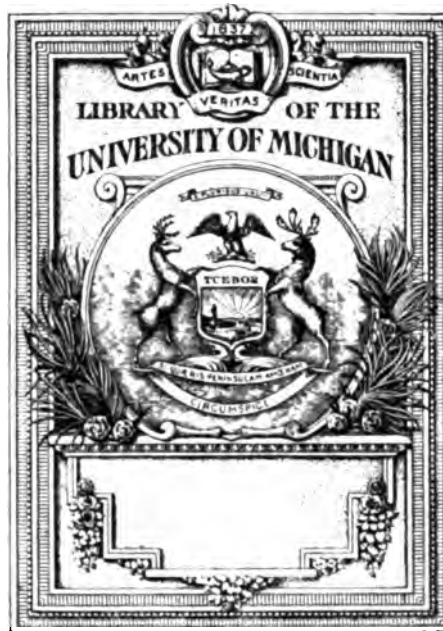
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To the Hon<sup>ble</sup> House  
of Representatives of the  
State of the Massachusetts  
The Proceedings of the  
Town of Concord —  
NB. N.

**The Commonwealth of Massachusetts**

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**A MANUAL**

**FOR THE**

**CONSTITUTIONAL CONVENTION**

**1917**



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**SUBMITTED TO THE CONSTITUTIONAL CONVENTION BY THE  
COMMISSION TO COMPILE INFORMATION AND DATA FOR  
THE USE OF THE CONSTITUTIONAL CONVENTION**

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**SECOND EDITION**

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**BOSTON  
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The frontispiece, which is supplied through the generosity of Hon. William Wheeler, a delegate to the Constitutional Convention from the town of Concord, is a reproduction in facsimile of the original record in the State Archives of Massachusetts of the resolution adopted by the town of Concord, October 21, 1776. This is believed to be the earliest formal statement in any official document of the distinction between a legislature and a constitutional convention.

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THE COMMONWEALTH OF MASSACHUSETTS

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COMMISSION TO COMPILE INFORMATION AND DATA

FOR THE USE OF THE

CONSTITUTIONAL CONVENTION

ROOM 426, STATE HOUSE

BOSTON



THE COMMISSION

WILLIAM B. MUNRO, CHAIRMAN  
LAWRENCE B. EVANS, VICE CHAIRMAN  
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HENRY WARD BIRD, SECRETARY

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## HISTORY OF THE CONSTITUTION OF MASSACHUSETTS.

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The fundamental law of Massachusetts is rooted well back in the past. The Constitution of 1780 is still in force in its essential principles; and these principles are derived in part from the Colony charter of 1629 and the Province charter of 1691.

### I.

#### THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY (COLONY CHARTER), 1629-1686.

Many of the political institutions of the Massachusetts Colony were the outgrowth of the charter of a business corporation. In granting articles of incorporation to trading companies operating in sections of the Empire in which no government owing allegiance to England had been established, it was the policy of the Crown to empower such companies not only to trade but also to make settlements and exercise political authority in those districts. These trading charters are the parents of the American State constitutions. Such a company was organized in London by a number of small investors in 1628. It obtained "all that part of New England in America" lying between parallels three miles north of the Merrimac and three miles south of the Charles. The next year it secured a royal charter from Charles I, dated March 4, 1629, constituting it the Governor and Company of the Massachusetts Bay in New England.

This charter followed the lines of other charters to joint-stock corporations. The stockholders were called freemen of the corporation. They were to elect their officials by ballot on the "last Wednesday in Easter tearme yearly," — the origin of our annual elections at fixed dates. The officials consisted of a Governor, Deputy Governor, and Assistants, corresponding to

the president, vice-president, and directors of a business corporation. Stockholders and officials must assemble at certain intervals in a "Greate and Generall Courte," with power "to make, ordeine, and establishe all manner of wholesome and reasonable orders, lawes, statutes," etc., and appoint all minor officials, for the governing of the plantation in Massachusetts Bay; likewise to "incounter, expulse, repell, and resist by force of armes, aswell by sea as by lande, and by all fitting waies and meanes whatsoever, all such person and persons as shall at any tyme hereafter attempt or enterprise the destruction, invasion, detriment, or annoyance to the said plantation or inhabitants."<sup>1</sup> The Governor, Deputy Governor, and Assistants constituted the directors' meeting of the corporation, known as the Court of Assistants, to meet at least once a month.

The apparent liberality of this charter is explained by the fact that the Massachusetts Bay Company, like the Virginia Company and other mercantile corporations, was expected to remain in London under the royal observation, there hold its General Courts and directors' meetings, thence to send out employees to govern its plantations in Massachusetts. Thus British India was governed, as late as 1773, by the East India Company in London.

At first the Massachusetts Bay Company obeyed the rules of the game. The General Court, meeting in London, sent out a company of emigrants to Salem under John Endicott, who was the company's representative. But shortly after securing the royal charter the Puritan stockholders of the company decided upon a revolutionary move. Wishing themselves to emigrate, they decided to take their government with them. Royal charter, Governor Winthrop, Deputy Governor Dudley, Assistants, and freemen were transferred from England to the soil of Massachusetts Bay by the ship "Lady Arabella" in the spring of 1630. The Court of Assistants met for the last time in England on board the emigrant ship, in Cowes Harbor, on March 23. The next entry is at Charlestown, five months later. By the single act of transfer capitalists became colonists, and the charter of a business corporation became the constitution of a semi-independent Commonwealth.

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<sup>1</sup> Cf. present Constitution, Chapter II, Section I, Article VII.



To adjust the charter to the exigencies of governing a Bible Commonwealth required much ingenuity. Most interesting it is to trace the evolution of the General Court from a stockholders' meeting into a representative body, and finally a bicameral legislature. Representation came about through the inconvenience of assembling all the freemen in the General Court in person. Beginning with 1634, the freemen of every town sent one or two Deputies to act as their personal representatives. Deputies and Assistants sat as one House for ten years, exercising supreme legislative and judicial power. The Deputies, outnumbering the Assistants, wished laws to be passed by a majority of the whole; but in 1636 it was enacted that "no law, order or sentence shall pass as act of the Court without the consent of the greater part of the magistrates on the one part, and the greater part of the deputies on the other." In 1644, following an acrid dispute between magistrates and Deputies over the case of Goody Sherman and her stray sow, the General Court separated into two co-equal Houses, the House of Assistants and the House of Deputies. "The bicameral system in America had its origin in Massachusetts. It is here we find the specific mode and the successive steps by which it took its rise."<sup>1</sup>

In 1636 the custom of two sessions annually, which lasted until 1831, was established. At the spring session, convening on the annual election day set by the charter, the Governor and magistrates were elected by the freemen and the government organized for the political year.<sup>2</sup> At the winter session most of the laws were enacted. The Assistants were the most powerful part of the colony government, since they constituted a superior court of judicature, an executive council, whose consent was required for every act of the government, and an upper branch of the Legislature. The Assistants, moreover, were magistrates or local judges. They would have preferred an election for life, but the charter provision for annual election prevented. However, the Assistants were annually renominated in order of their seniority, each freeman casting a grain of corn

<sup>1</sup> W. C. Morey in *Annals of the American Academy of Political and Social Science*, IV, 212.

<sup>2</sup> The Deputies cast the ballots of those freemen who did not come up to Boston to vote in person.

if he wished the candidate to be re-elected, or a black bean if he did not. Thus a new candidate could be nominated only if one of the existing incumbents were counted out. Long terms of office resulted, Simon Bradstreet being elected Assistant for forty-seven years, and then Governor for ten years. As the Governor and the Assistants were elected independently of the Deputies, they refused to consider themselves responsible to the General Court. Thus began the separation of the executive and legislative branches. Men were made freemen of the corporation, *i.e.*, voters, by special act of the General Court, and no one was eligible for the franchise save members of the Puritan churches.

Many other governmental problems had to be solved by the colonists, independently of the charter. The township system of local government, perhaps the greatest contribution of Massachusetts to political science, was established as early as 1634. A liberal system of land distribution was adopted, and land tenure was shorn of feudal dues and incidents. A unique relationship of church and State was worked out. The ministers, chosen by the congregations, were ineligible for political office, but their influence was great, and as a body their opinion was consulted on constitutional questions, as that of the Supreme Judicial Court is to-day. "Moses, his judicials," were originally declared the law code, but this gave such extensive power of interpretation to the judges that a primitive Bill of Rights, the "Body of Liberties," was established in 1641.

Within fifteen years of the transfer of the charter, the Governor and Company of the Massachusetts Bay had become a vigorous, efficient, and somewhat high-handed government, independent of England in all save name. According to modern standards it was not a democracy and was never so intended. But the Massachusetts Bay colonists enjoyed a greater measure of self-government than any people in the world outside New England. The Colony may best be described as an aristocratic republic. On account of the church-member franchise, and the earlier recognition of the Bible as part of the fundamental law, it is often compared to the theocratic government of ancient Israel.

## II.

## INTER-CHARTER PERIOD, 1686-1692.

Following various unsuccessful attempts of the Stuart kings to impose their policy on Massachusetts Bay, the Colony charter was cancelled by the High Court of Chancery on October 23, 1684. On May 21, 1686, the old General Court held its last meeting, and on May 25 Massachusetts was formally merged into the Dominion of New England. The Dominion was ruled by a President or Governor, and Council appointed by the King, all elections and representative institutions save the town meetings being abolished. When news arrived of the Revolution of 1688 in England, the people of Boston, on April 18, 1689, rose up against Governor Andros and imprisoned him in the fort on Castle Island. The Assistants elected in 1686 then took charge, and summoned a convention of Deputies from the towns, with whose permission (and subsequently the royal approval) they declared the old charter government provisionally restored.

## III.

## THE PROVINCE OF THE MASSACHUSETTS BAY (PROVINCE CHARTER), 1692-1774.

The inter-charter period ended and the Province period of Massachusetts history began on May 16, 1692, when Sir William Phips was sworn in as first royal Governor of Massachusetts Bay under the Province charter.

The Province charter, granted by William and Mary on October 7, 1691, annexed to Massachusetts the Colony of New Plymouth. The Pilgrim Colony, older than Massachusetts Bay, had hitherto pursued the quiet tenor of its way with no other constitution than the Mayflower Compact of 1620. The charter also annexed the islands of Nantucket and the Vineyard, and the present State of Maine, part of which had already been purchased by the Colony of Massachusetts Bay.

On the constitutional side, the Province charter was an attempt to compromise imperialism with colonial self-government. It was a grant of home rule, with several strings attached, — an independent Puritan foundation, with a new royal super-

structure. Various devices were employed to bind these unharmonious sections to one another and to the British Empire. All proved unavailing.

This new charter left intact the old system of local government and the lower House, now called the House of Representatives, of the "Great and General Court or Assembly," as the Legislature was now styled. A low property qualification replaced the religious qualification for the franchise, and the number and apportionment of representatives were left to the General Court. The old Board of Assistants was abolished, its judicial functions being given to a separate judiciary, organized by the General Court and appointed by the Governor. The Assistants' executive and legislative functions were granted to a Council of twenty-eight members. This provincial Council was annually elected, not by the people, but by the General Court, the outgoing Council taking part in the election of its successor, and the Governor having a veto on the choice. The election of the Council took place at the beginning of the political year, which was slightly altered to the last Wednesday in May, at which date it remained until 1831. The Council was the upper branch of the Legislature and an advisory body to the Governor.

The General Court retained legislative power over the affairs of the Province. Its acts were subject to veto by the royal Governor, and, if contrary to the laws of England, to disallowance within three years by the Privy Council. Cases could also be appealed from the provincial judiciary to the Privy Council, which thus stood in much the same relation to Massachusetts as the Supreme Court of the United States to-day. Besides its general legislative powers, the General Court was given a right to create all the civil offices in the Province, except that of secretary, and make most of the appointments. Furthermore, there was no law or custom to prevent a member of the General Court from filling a place he had helped to create, even a seat on the Superior Bench.

At the head of the Province was the royal Governor, appointed by the King during his good pleasure. His Excellency was a more powerful and imposing personage than the Governor of the Colony. He had a full veto over legislation, was the

captain general of the militia, the chief executive officer of the Province, and the King's personal representative. By the so-called Explanatory Charter of 1725, the King granted him power to veto the choice of speaker by the House. His Honor the Lieutenant-Governor, also appointed by the King, succeeded to the functions though not the title of the Governor upon the latter's removal, absence, or death. In ordinary times he was frequently elected to the Council. The King also reserved to himself admiralty jurisdiction within the Province, in order to enforce the commercial acts of Parliament, which were passed with increasing frequency.

Yet with all these instruments royal control was never effective. The compromise between imperialism and self-government worked all in favor of the popular side. Owing largely to the Governor's dependence for his salary on the House of Representatives, the latter gradually acquired control of the Province. An unacceptable bill could escape veto by having His Excellency's salary attached to it as a rider. It could escape disallowance by the Privy Council in England by its operations being limited to two or three years. By having the major voice in the election of the Council, the House was able to control the whole General Court, and the General Court elected the Treasurer and Receiver-General, which gave it a control over appropriations as well as taxation. The Governor alone had the right to govern the militia, and "assemble in martial array and put in warlike posture the inhabitants" to "kill, slay, destroy," etc., the enemy; but all this cost money, which the General Court alone could or would furnish. Finally it came to pass that no force could be raised, or military officer be appointed, without the consent of the House; otherwise no pay was forthcoming for said force or officer. The Governor could dissolve a recalcitrant General Court, but a new one had to be elected the following spring. By about 1745 the royal Governor became little more than an administrative figurehead, dependent on his personal influence for what little power he was able to exert. This compromise was, needless to say, reasonably satisfactory to the people of Massachusetts; and the attempt of the ministers of George III to restore the balance in favor of imperialism caused the American Revolution.

## IV.

## COLONY AND STATE OF MASSACHUSETTS BAY (PROVINCIAL CONGRESS AND PROVINCE CHARTER RESUMED), 1774-1780.

The "five intolerable acts" of Parliament of 1774 included an act amending the Province charter by providing that henceforth the Council, instead of being elected by the General Court, should be appointed by the King's writ of mandamus. To this the people refused to submit. The last regular provincial General Court was dissolved by Governor Gage on June 17, 1774. During the summer the people broke up the courts and held county conventions, which resolved to ignore the "mandamus council," treat the act in question as unconstitutional and void, and send delegates to the Continental Congress at Philadelphia and to a Provincial Congress at Concord.

On September 1, 1774, Governor Gage issued writs for the election of a new General Court, to meet at Salem on October 5. On September 28, owing to the "many tumults and disorders," he cancelled the election. Ninety Representatives-elect met in spite of him at the appointed time and place, declared the Governor's action unconstitutional, resolved themselves into a Provincial Congress on October 7, and adjourned to Concord. There they were joined on October 11 by the delegates already elected to the Provincial Congress by order of the county conventions.

During the next nine months Massachusetts was governed by three successive Provincial Congresses. These were simply revolutionary conventions, — State editions of the Continental Congress at Philadelphia. Each town sent as many delegates as it liked. John Hancock was president of the First and Second Congresses, and Joseph Warren, who fell at Bunker Hill, was president of the Third Congress. While Governor Gage, in Boston, was attempting to suppress rebellion with the aid of his "mandamus council" and the redcoats, the Provincial Congress, meeting at Concord, Cambridge, and Watertown, governed the Province in revolution. On May 5, 1775, after the Concord fight, it declared General Gage no longer the lawful Governor, and on June 20 it ordered the election of a regular General Court under the Province charter.

The House of Representatives thus elected met at Watertown on July 19, 1775, the Third Provincial Congress dissolving the same day. Two days later the House elected a Council of twenty-eight; and the full General Court thus formed resolved that "whereas the late Governor, Lieutenant-Governor or Deputy Governor of the Province have absented themselves, and have refused to govern the Province according to the Charter," the executive power, according to said charter, devolves upon the Council. The Province charter, amended by this legal fiction, was the constitution of the Colony and State of Massachusetts Bay from July 28, 1775, to October 25, 1780.

The old Province and regal forms were retained until June 1, 1776, when writs were first issued in the name of the "Government and People of the Massachusetts-Bay." "Colony of the Massachusetts-Bay" was the official title of the government until the Declaration of Independence was proclaimed from the balcony of the old State House, on July 18, 1776. For the next four years the title, with variations, was "State of Massachusetts-Bay (in New England)." The General Court was usually styled the General Assembly at this period.

This decapitated and republicanized royal charter did not make a successful constitution. A Council of twenty-eight members, fifteen of whom made the quorum, was too slow and unwieldy an executive, especially in war time. It was too fond of appointing its own members to salaried positions. Samuel Freeman, for instance, was at the same time member of the House from Falmouth (Portland), clerk of the House, register of probate, clerk of the superior court, clerk of the sessions, and justice of the peace. The judicial system set up by the General Court was so cumbrous and expensive that the towns of Berkshire County refused to recognize it, setting up local courts of their own. The towns, in fact, were the most powerful part of the government of Massachusetts during the Revolution. They held county and other conventions without any authority from the General Court, gave their representatives precise instructions, and insisted that many important matters, including all constitutional questions, should be referred back to them.

## V.

## THE MOVEMENT FOR A STATE CONSTITUTION, 1776-1780.

## 1. PRELIMINARIES.

Before the resumed Province charter had been in operation six months, the demand was made for a new State constitution. This movement originated in Berkshire County, which, on account of its poverty and remoteness, was more alive to the defects of the Provincial system than any other section of the State. It was led by the Rev. Thomas Allen of Pittsfield, a fighting parson who accompanied his flock to Bennington, and himself fired the first shot of the battle. For his straight thinking on constitutional questions, and his great influence on the movement, Thomas Allen deserves a high place in the history of Massachusetts.

"A memorial to the General Court from the town of Pittsfield," on May 29, 1776, insisted "that the people are the fountain of power;" that the old charter and compacts were dissolved by the war; and that the General Court had no right to impose any constitution over the people, much less the Province charter. Pittsfield requested the General Court to frame "a fundamental constitution as the basis and frame-work of legislation," and refer it to the people for their approbation; for only the consent of a majority can "give life and being to it." When we remember how slowly the modern idea of constitutional law developed, and that all the American State constitutions of 1776 were framed by legislative bodies and put in force without popular ratification, we can appreciate the forward-looking character of this Pittsfield memorial.

The Declaration of Independence so strengthened the constitutional movement that on September 17, 1776, the House requested the towns to vote whether or not they would grant it permission to go into convention with the Council to frame a constitution; and whether they wished it made public for the "inspection and perusal of the inhabitants before the ratification thereof by the Assembly." This was the first of eight occasions in the history of Massachusetts in which the people have been asked to decide for or against a constitutional convention.



Less than half the towns voted. Most of those that did were willing that the General Court should frame a constitution, provided it were made public not only for inspection and perusal but for ratification. At least two towns — Concord on October 21, 1776, and Acton on November 4 — laid down the principle that a constitution should be framed not by a legislature but by a convention of delegates elected for that purpose alone. Concord made a good argument for the principle,<sup>1</sup> and further specified that the delegates should be chosen by "the Inhabitants of the Respective Towns in this State being free & of twenty one years of age, and upwards." These are the earliest suggestions as yet discovered in American history of the perfected constitutional convention.

The House committee appointed to canvass these returns and bring in a resolve was so impressed by this suggestion that in January, 1777, it recommended a constitutional convention as subsequently called in 1779. But the General Court did not care to let the task out of its own hands. By a resolve of May 5, 1777, it requested the towns to instruct their representatives to the next General Court to form with the Council a constitutional convention. Not all the towns gave this permission. Boston, in particular, ordered its representatives to oppose a legislative convention. The General Court, it explained, would never "prevent the lately too prevalent custom of accumulating offices in one person," and forbid its own members "from accepting any." The General Court ignored these protests, resolved itself into a constitutional convention on June 17, 1777, appointed a joint committee to draft a constitution, and again went about its legislative business. The committee did not report until December. In January, 1778, House and Council again went into convention to discuss and amend the committee's report, and on February 28 the completed constitution was accepted, and submitted to the people for adoption or rejection as a whole by a two-thirds majority. It was the first American State constitution to be formally submitted for popular action.

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<sup>1</sup> A part of the resolution adopted by the people of Concord is incorrectly printed in *The Debates of the Convention of 1853*, I, 823. The frontispiece of this volume is a reproduction of the record of the Concord town meeting. The original is in the State Archives of Massachusetts.

## 2. THE CONSTITUTION OF 1778, AND THE ESSEX RESULT.

The Constitution of February 28, 1778, was so imperfect that the Rev. William Gordon of Roxbury, chaplain of the House, publicly asserted that it had been framed with the express intention of having it rejected. (Shortly afterward the House dispensed with Dr. Gordon's services.) There was no Bill of Rights, which omission alone was enough to insure its rejection. There was a legislature of two branches, but the Senate was elected indirectly, and acted as the Governor's Council as well as upper House. The Governor had no veto power, and all his acts were limited by the advice and consent of the Senate, in which he had a seat and vote. The whole document was poorly arranged and loosely drafted. As Boston predicted, members of the Legislature were not forbidden to hold offices of their own creation. In one respect, however, the Constitution of 1778 was more liberal than that of 1780; there was no property qualification for the electors of Representatives, and the Senators were apportioned according to population, not taxable property.

The Constitution submitted to the people of Massachusetts in 1778 was rejected by the emphatic vote of 2,083 yeas to 9,972 nays. This decision was undoubtedly influenced by a pamphlet which appeared in April, generally called the *Essex Result*, as it was adopted by a convention of delegates from the towns of Essex County. The *Essex Result* was drafted by a twenty-seven year old lawyer of Newburyport, who subsequently became Chief Justice Parsons. He not only points out the defects in the Constitution of 1778 but undertakes to ascertain "the true principles of government" upon which he believed the Constitution of Massachusetts should be founded. Following Locke and the eighteenth-century philosophers, Parsons starts with the theory of popular sovereignty and natural rights. Some, like the rights of conscience, are inalienable, and are no proper objects for governmental action. These should be defined and retained in a Bill of Rights. Other rights must be given up to the supreme power of the State in order to enable it to protect the life, liberty, and property of the citizen. The great problem is to frame this government.

"Let the supreme power be so defined and balanced that the laws may have in view the interest of the whole; let them be wisely and consistently framed for that end, and firmly adhered to; and let them be executed with vigor and dispatch."

The last clause strikes a new note in American political theory. Americans, so far, had been more concerned with preventing tyranny than with promoting efficiency. Owing to their experience with royal governors and judges, they were suspicious of the executive and judicial branches. Virginia had intrusted her supreme power to the Legislature, which elected and largely controlled the Governor; Pennsylvania dispensed with the Governor and the upper House. But many of the leading thinkers among the patriots, notably John Adams, Thomas Jefferson, and James Madison, believed that the supreme power should be divided into a legislative, an executive, and a judicial power, each to be exercised by a different set of men, and all three co-ordinated by a series of checks and balances. Theophilus Parsons carried this doctrine a step further in the *Essex Result*. "The legislative power must not be trusted with one assembly. A single assembly is frequently influenced by the vices, follies, passions, and prejudices of an individual." It should be divided into two branches, one to represent the people at large, among whom "we shall find the greatest share of political honesty, probity and a regard to the interest of the whole;" the other branch to represent the property of the State, and to give a share in government to "gentlemen of education, fortune and leisure," among whom "we shall find the largest number of men, possessed of wisdom, learning, and a firmness and consistency of character." If each House has an equal voice, no law can be passed without the consent of a majority of "those members who hold a major part of the property," as well as a majority of the persons in the State. A Senate, furthermore, will be able to revise "crude and hasty determinations of the House."

Vigor and dispatch are the chief qualities to be aimed at for the executive. "It should be able to execute the laws without opposition, and to control all the turbulent spirits in the state, who should infringe them. If the laws are not obeyed, the legislative power is vain, and the judicial is mere pageantry."

Let the executive power, then, be vested in one Governor, to be elected by all the people of the State. Give him a complete negative on all laws. He should have a "privy council" to advise with, not chosen by himself but by the House out of the Senate. As this will be a sufficient check on him, he should have a permanent fixed salary, and not be dependent, like the old royal Governors, upon the bounty of the Legislature.

The judges also should be appointed during good behavior and have independent salaries. And as legislative appointment of judges has already proved unsuccessful, let them be appointed by the executive, but removable for misbehavior by the Legislature.

In descending from the general to the particular, the *Essex Result* was not so apt, proposing a complicated system of indirect elections through county conventions. But the pamphlet is nevertheless an interesting expression of those principles upon which the Constitutions of Massachusetts and the United States were founded, and an early product of the school of political thought that tamed and curbed the radical forces let loose by the American Revolution.

### 3. THE CONSTITUTIONAL CONVENTION OF 1779-1780.

The *Essex Result* wished the framing of a constitution to be postponed until the end of the war, and did nothing to promote the idea of the special constitutional convention; that was purely a popular movement. The General Court, which had voted down the idea two years before, was sufficiently chastened by the recent rejection to take it up again in the spring of 1779. A resolve of February 19 requested the people to decide in their spring town meetings whether they would empower their representatives to call a convention for the sole purpose of framing a constitution. The result was 6,612 yeas and 2,639 nays. Essex, Barnstable, and the Maine counties cast a light and unfavorable vote, while Boston and the three western counties of Worcester, Hampshire, and Berkshire cast a heavy and almost unanimously favorable vote.<sup>1</sup> The General Court then ordered the towns and plantations to elect as many delegates to the Convention as they

<sup>1</sup> Franklin and Hampden counties were not incorporated until 1811 and 1812.

were entitled to send representatives, and expressly provided that every resident freeman twenty-one years of age should vote. As a property qualification was then required for voting for representatives, the Convention rested on a wider electorate than the existing State government. It derived all its authority from the people, in the widest contemporary political sense of that word; and to the people its work was submitted. It cut loose completely from the State government, even to the extent of refusing to apply to it for pay and mileage.

This Convention of 1779-1780 had the greatest task of any constitutional convention in the history of Massachusetts, and performed it under peculiarly difficult circumstances. The period of its sessions, from September 1, 1779, to June 16, 1780, was perhaps the darkest of the Revolutionary War. A joint naval and military expedition, brought together by the State at great cost to dislodge the enemy from Maine, had ended in complete disaster. Sir Henry Clinton was conquering the Carolinas. Our French allies had not yet sent Rochambeau's army or De Grasse's navy. Washington was stalemated on the Hudson, his army undermined by sickness and desertion. State and nation were on the verge of bankruptcy. The Tories were taking heart, and the neutrals going over to their side. Yet at this crisis the State was able to assemble a Convention of 312 members, which, judged by its results, must unquestionably be called the greatest in its history.

Boston sent James Bowdoin (who was elected president of the Convention), Samuel Adams, John Hancock, Samuel Allyne Otis, and John Lowell the elder; Roxbury sent Increase Sumner; Braintree, its favorite son, John Adams; Salem, John Pickering, William Pickman, and Henry Higginson; Newburyport, Jonathan Jackson, Nathaniel Tracy, and the author of the *Essex Result*; Beverly, George Cabot; Groton, James Sullivan; Worcester, Levi Lincoln the elder; Springfield, Luke Bliss and William Pyncheon; Northampton, Caleb Strong, who holds the record for length of term as Governor of the Commonwealth; Scituate, Judge William Cushing; Taunton, Robert Treat Paine the signer; York, Judge David Sewall; and Brimfield, Timothy Danielson. Hardly an eminent patriot in the State, who was not serving in some other civil or military capacity, was omitted.

At its first session, in the Meeting House in Cambridge, the Convention organized, adopted a set of ten rules and orders, elected a committee of thirty to prepare a draft, spent a day in "a general and free conversation" on the Constitution, "which lasted till sunset," and adjourned on September 7.

The committee of thirty met at the "New Court House" in Boston, on the site of the present City Hall. It delegated its duties to a subcommittee consisting of James Bowdoin and the two Adamses; and that committee left the entire task to John Adams. No better selection could have been made. John Adams was in his forty-fifth year, at the height of his powers, and one of the highest authorities on political science in America. Long a student of government, his advice had been sought by the framers of the early constitutions in the southern States. He was highly equipped as a lawyer and a practical politician. As a patriot leader in the provincial government and the Continental Congress, and as a minister to France, his political experience was extensive. It was the task of John Adams to construct a government on the ruins of what his cousin Samuel Adams had done so much to destroy.

The Adams draft, with one or two additions by the larger committee, was ready for the Convention at the beginning of its second session, on October 28, 1779. This entire session was devoted to the Declaration of Rights. Attendance fell off to such an extent that on November 11, when this first part of the Constitution was completed, the Convention adjourned to January 5, 1780. This long recess did not promote better attendance, for in the meantime the hard winter of 1780, the last really "old-fashioned winter," set in. Boston Harbor was frozen up to Nantasket Roads, and the snow lay so deep in the interior that travel was impossible save by snowshoes. Oldest inhabitants could remember nothing like it since 1717, and its equal has not been known since. The result was that the third session, at the Representatives' Chamber in the Old State House, was unable to transact any business until January 27, when sixty members were present, and the attendance never rose above eighty-two. Yet this was the most important session of the Convention. Almost every article of the John Adams draft of the Frame of Government was committed, debated, and

polished into its final form. On March 2 the Convention again adjourned, submitting the result of its labors to the people in a printed pamphlet, together with an address recommending its acceptance.

#### 4. THE RATIFICATION.

The mode of ratification adopted by the Convention was peculiar. Profiting by the experience of 1778, it did not submit the Constitution as a whole to popular vote. Instead, it asked the adult freemen to convene in their town meetings to consider and debate the Constitution clause by clause, to point out objections, if any, to particular articles, and to send in their returns to the secretary of the Convention, with the yeas and nays on every question. The people were then asked to empower the Convention at an adjourned session on June 5 to ratify and declare the Constitution in force if two-thirds of the voters were in favor of it, or, if not, to alter it in accordance with the popular will as expressed in the returns, and ratify it as thus amended. It was now almost four years since the machinery of constitution making had been set in motion.

About 16,000 people out of a total population of 363,000 voted on the Constitution. This was a larger vote than was cast for Governor during the next six years. The town meetings freely accepted the invitation to criticise the Constitution; and their returns are a remarkable testimony to the political wisdom of the plain people of that day. A few objections were grotesque, and certain proposals were reactionary, but many were subsequently adopted as amendments to the Constitution.

On June 5 the Convention convened for its fourth and last session at the old Brattle Street Church in Boston. It had previously invited the towns to replace their delegates by new members if they wished, but only a few did so. A committee was appointed to canvass the returns and report the result to the Convention. This committee adopted a system of tabulation which to-day would be called political jugglery. The towns had not voted on the Constitution as a whole, but article by article; and in many cases they proposed a substitute for an article they objected to, and voted on that instead of on the original. These votes on amended articles were either thrown out or

counted as if cast for the original article. Hence it was made to appear that every article of the Constitution had well over a two-thirds majority, although a fair tabulation would have shown only a bare majority for at least two.<sup>1</sup> Doubtless the Convention felt justified in this rather questionable work by the imperious necessity of obtaining the adoption of the Constitution, for in some parts of the State the cry "No Constitution, No Law," was being raised to excuse men from paying taxes or doing military service. On June 15 the Convention voted that the people have accepted the Constitution "as it stands in the printed form." The next day it provided for the first election of Governor and General Court, and closed "with thanksgiving and prayer." On October 25, 1780, John Hancock was inaugurated the first Governor of the Commonwealth of Massachusetts.

## VI.

### CONSTITUTIONAL DEVELOPMENT IN THE COMMONWEALTH OF MASSACHUSETTS, 1780-1915.

#### 1. THE CONSTITUTION OF 1780.

John Adams was a conservative, in the best sense of the word. He believed in preserving old institutions (like annual elections) that had proved their worth, in discarding others (like a dependent judiciary) that had not, and creating new ones (like the constitutional convention) to meet new needs. His plan was largely that of the *Essex Result*, which in turn was doubtless influenced by his own writings on government. The materials he chose from the old colonial and provincial structures, from concrete experiences in self-government for a century and a half, and from the constitutions of sister States.

The Preamble, a new feature in constitutions, is Locke and Rousseau epitomized. The Declaration of Rights is derived from the Bills of Rights of other constitutions, from the colonists' own experience with governmental tyranny, and from sources as remote as Magna Carta.<sup>2</sup> It was more nearly com-

<sup>1</sup> *Proceedings of the Massachusetts Historical Society*, May, 1917.

<sup>2</sup> Article XI is an expansion of Magna Carta, section 40, and the third sentence of Article XII is almost a literal translation of Magna Carta, section 39.



plete than any of its predecessors. Fourteen of the thirty articles are almost identical with the Pennsylvania Declaration, and many of these were taken from the Virginia Bill of Rights of 1776. Others are found in the early constitutions of Maryland, North Carolina, and Delaware.

Three years later, Article I was held by the Supreme Judicial Court, all the judges of which had been members of the Convention, to abolish slavery in Massachusetts. It is doubtful whether it had been inserted for that purpose. Most of the other articles were designed to protect the civil rights of the citizens. Articles XIV and XXIV, against general warrants and *ex post facto* laws, were suggested by the provincial experience with writs of assistance and parliamentary legislation. Subsequent constitutional conventions may be said to be based on Article VII. In John Adams's original draft, Article XVI protected liberty of speech as well as the press, but the Convention amended it. Article XXIX embodied one of John Adams's profoundest convictions, — the preservation of impartial justice by a judiciary appointed during good behavior and assured of a fixed salary. The provincial judiciary had been most susceptible to political pressure by being appointed during the King's pleasure, and having its salaries annually granted (or withheld) by the General Court.

Article XXX states the central principle of the theory of separation of powers, — that the three branches of government be exercised by a different set of men. Each branch of the government was "balanced" and "checked" by the other two. The supreme power, the people, checked all three through the Declaration of Rights.

"In studying the relations existing between church and State under the revolutionary constitutions," writes Dr. William C. Webster, "one is impressed with the striking contrast between facts and pretensions."<sup>1</sup> In almost every constitution were resonant and high-sounding clauses concerning the sacredness of religion and liberty, followed by others denying religious liberty to many creeds and sects. Our own was no exception. Article II of the Declaration of Rights guaranteed freedom of con-

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<sup>1</sup> *Annals of American Academy of Political and Social Science*, IX, 403.

science, but Article III set up a quasi-religious establishment.<sup>1</sup> It embodied in the fundamental law of the Commonwealth a church and State relationship formerly alterable by the Legislature. The general principle was that every citizen of the Commonwealth must pay taxes towards the support of the Congregational church of the town, parish, or precinct where he resided and where his property was located. The fourth paragraph allowed non-Congregationalists to pay their religious tax to their own pastor; but the courts construed this clause so narrowly that in practice it exempted only members of an incorporated Episcopalian, Baptist, Methodist, or Universalist church. A member of one of these bodies who resided too far from a church of his denomination to attend it, or a non-church-goer, had to help support a Congregational minister, — unless he lived in Boston, where the voluntary system prevailed. The article was distinctly the work of orthodox Calvinist Congregationalists; it was intended (in spite of the fifth paragraph) to favor, and did favor, that sect. But the third paragraph had some unexpected results. Several of the towns and parishes, which thereby were given the exclusive right to elect their “public teachers” (ministers), were converted to Unitarianism, and settled Unitarian pastors over old Calvinist churches. The ratification of Article III was strongly opposed by Baptists and liberals of all shades. During the fifty-three years it was in force it was fruitful in lawsuits, bad feeling, and petty persecution.

The Constitution of Massachusetts was more liberal than many of the period in extending civil rights to Catholics. The oath of office, however, was intended, as the Convention’s address explained, to exclude “those from Offices who will not disclaim these Principles of Spiritual Jurisdiction which Roman Catholics *in some countries* have held.” Several attempts were made in the Convention to qualify the word “Christian,” wherever it appears in the Constitution, with the word “Protestant,” but without success. John Adams regretted the Convention’s

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<sup>1</sup> The system cannot be described in any one word or phrase. It was not an establishment like that of the Church of England in Ireland and South Carolina, because the Legislature had no power to regulate doctrine and force conformity; and because dissenters received a share of the taxes levied for religious purposes. The Congregational churches were favored rather than established in Massachusetts.

insertion of the test oath, and Joseph Hawley, the patriot leader of western Massachusetts, refused an election to the State Senate because of it.

Chapter I, Section I, preserves the ancient title of the Legislature, the traditional commencement of the legislative year, and much phraseology of the Colony charter. In obedience to the principle of separation of powers, the legislative powers of the old provincial Council were assigned to a Senate, and its executive powers to a Governor's Council; but the common origin of the two was preserved in their election. By this clumsy method the whole General Court chose nine of the forty "councillors and senators" to be the Council; the remainder constituted the Senate. After political parties were formed it became a regular thing for a Councillor-elect to refuse to leave the Senate, fearing to cut down his party's majority; the vacancy in the Council would then (Chapter II, Section III, Article II) be filled from the people at large. The Governor, unlike the President of the United States, was not allowed to select his own Cabinet or Council, since the latter was created to check any tyrannizing tendencies that might crop out in the person of the chief magistrate. All the States but two had a Council. About thirty years later, John Adams wrote a friend that he was heartily sick of the Governor's Council, and in the Convention of 1820, old as he was, he made a speech in favor of its being elected by the people or abolished altogether.

"The House of Representatives is intended as the Representative of the Persons, and the Senate of the property of the Commonwealth," states the address of the Convention of 1780 to the people. Chapter I, Section II, Articles I and V, adopted the scheme of the *Essex Result* for making the Senate responsive to property interests, — an apportionment of the Senators according to the taxable property of senatorial districts, with a high property qualification for the office. The famous gerrymander of 1812 was a rearrangement of senatorial districts. Power to try impeachments presented by the lower House was also granted to the Senate.

In spite of the fact that the House was supposed to represent the people at large, Chapter I, Section III, Article IV, adopted

a property qualification for voting for Representatives as well as Senators. The qualification was not large and in practice soon became a dead letter; but it was fifty per cent higher than that of the Province charter, and exceeded the requirements in every other State save South Carolina. A number of towns strenuously objected to it as unfair, undemocratic, and a violation of the principle of "no taxation without representation." It is difficult to understand why the manhood electorate that voted on the Constitution of 1780 consented to its own partial disenfranchisement by accepting this article.

The town of Newton, in its return on the Constitution, demanded the extension of the referendum to ordinary legislation. It proposed that upon application of the selectmen of seven towns, any act of the Legislature must be submitted to the town meetings, and might be repealed by a majority of those voting thereon.<sup>1</sup>

The distribution and numbers of Representatives in the lower House was an open constitutional question in Massachusetts until Amendment XXI was adopted, in 1857. The problem was a three-cornered one, — to reconcile the desire of the smallest towns to retain their traditional right to one Representative, and the claim of the urban centers to a proportional number, with the necessity of keeping the size of the House within reasonable bounds. John Adams at least satisfied town and country, which is more than can be said of the revisions between 1820 and 1853. But in 1812 the membership of the House exceeded 700, or 1 to every 1,000 people. A similar proportion would give us to-day a representative body 3,700 strong. The quorum for the House was so ridiculously small that it was no larger at times than the membership from Boston alone.

The property qualifications for office were higher than in any contemporary constitutions, except those of New Jersey, South Carolina, and Georgia.

Chapter II, Section I, on the Governor, created the most imposing and independent chief executive in the United States. In only three other States was the Governor elected by the people, and no other State granted him so great a power of appointment, or a share in legislation. John Adams and The-

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<sup>1</sup> 277 State Archives, 22.

ophilus Parsons believed in an absolute veto; but the Convention amended John Adams's draft by allowing the Legislature to override the veto by a two-thirds majority. The absence of any constitutional restriction on the Governor's re-election was also unprecedented. Governors Hancock and Strong were both re-elected ten times.

Chapter III, on the judiciary, repeated the principle of fixed tenure and salary already stated in Article XXIX of the Declaration of Rights. The people have frustrated every effort of the politicians to revise this chapter, — only one amendment (XXXVII), and that of an interpretative character, ever having been ratified.

In Chapter III, Article I, it was provided that the judges may be removed at any time by the Governor, with the consent of the Council, on the address of both houses of the Legislature. This power of removal has been sparingly exercised, and only once — the anti-slavery case of Judge Edward G. Loring — abused.

Chapter V, Section I, defined the rights and privileges of Harvard College. Section II, on "the encouragement of literature, etc.," was John Adams's favorite section. He wished Massachusetts to emulate foreign governments in the promotion of scientific research and scholarship. He was particularly anxious lest the "natural history" and "good humor" clauses be deleted by the Convention. The section indicates a much broader conception of governmental action than was common in the individualistic America of that day.

Chapter VI, Article X, providing for the possible holding of a constitutional convention in 1795, secured a more narrow popular majority than any other article of the Constitution. There was a general feeling of its inadequacy.

The decennial valuation provided for in Chapter I, Section I, Article III, was a unique feature of the Massachusetts Convention.

Although faulty in many of its details, the Constitution of 1780 was the most successful and enduring State constitution of the Revolutionary period. The separation of powers was carried out more boldly and logically than ever before, and the drafting was greatly superior to the standard of the day. It has

been possible in the last one hundred and thirty-six years to change outgrown details while retaining the framework almost unimpaired. No other American constitution has had as long a life; no other written constitution now in force dates back so far.

The Constitution went into effect on October 25, 1780, when John Hancock was inaugurated the first Governor of the Commonwealth. At the foot of his proclamations appeared for the first time the now familiar formula, "God save the Commonwealth of Massachusetts."

## 2. THE CONSTITUTIONAL CONVENTION OF 1820.

The vote on the question of calling a constitutional convention in 1795 was the heaviest in proportion to the electorate ever cast in Massachusetts on a constitutional question, being greater than the total vote for Governor the same year. A bare majority was in favor of revision, but as Chapter VI, Article X, required a two-thirds majority, no convention was held. No other method of amendment was provided, hence a new convention was necessary for constitutional development. The right of the people to call one whenever the majority wished might be inferred from Article VII of the Declaration of Rights, as well as the precedent of 1779, and the general practice of American States.

The direct occasion for holding the Convention of 1820 was the separation of Maine from Massachusetts. Governor Brooks, after alluding to this matter in his message of January 13, 1820, inquired whether general "considerations affecting the interests of the people, as connected with the future operations of the government, will not, at the present time, call for at least a partial revision of the Constitution?"

"The indefeasible right of the people 'to institute government,' and 'to reform, alter, and change the same, when their protection, safety, prosperity, and happiness require it,' is distinctly asserted in the bill of rights. But the Constitution contains no provision for a revision after the year 1795. Yet as the legislative power extends to every object that involves the good and well-being of the Commonwealth, which is not specifically excepted, we may infer the right and duty of the Legis-

lature, to submit to the consideration of the people either the general question of revision, or such propositions for particular amendments, as they shall judge to be most promotive of the public good.

"The subject, gentlemen, is constitutionally in your hands."

The General Court took no action at its winter session, possibly because it was not certain until March 3, when the Maine-Missouri bill passed Congress, that the separation would really take place. On March 15, after the Legislature of 1819-1820 had adjourned, Maine left us. The consequence was that only thirty-one Senators from ten districts, instead of forty Senators from thirteen districts, assembled at the State House on the last Wednesday in May, 1820. Certain newspaper critics deemed this a breach of the Constitution, reparable only by the speedy summons of a constitutional convention without wasting time over a popular referendum. A Senate committee appointed to consider the question reported on June 10 that in its opinion no constitutional action was necessary. Since, however, "a very general expectation exists among the people in every quarter of the State that the occasion would be taken, and was favorable for the revision of the Constitution," they begged leave to report a bill for taking the sense of the people on that subject. This bill, with an original requirement for a two-thirds majority, amended to a bare majority, became a law on June 16.

It was a much more elaborate enabling act than the resolve of February 19, 1779, and provided that in case the people chose to have a convention each town could elect as many delegates as it was entitled to send Representatives to the General Court. No one was allowed to vote for delegates unless qualified to vote for Representatives. The Convention of 1820, unlike its predecessors, did not rest on universal suffrage; but it was granted full power to determine the mode and manner of submitting its work to the people, with a blank check on the treasury for pay and expenses.

On August 21 the people decided, by a vote of 11,756 to 6,593, to hold a convention. Hampshire and Franklin counties and about seventy towns throughout the State voted against it, but several of these towns sent delegates who took a leading and constructive part in the debates. The election of delegates took

place on October 16, and the Convention assembled in the old Representatives' Chamber of the State House on November 15. It was the largest of our constitutional conventions, the total membership being four hundred and eighty-five.<sup>1</sup>

The period was unusually favorable for a constitutional convention. It was the "era of good feeling" in national politics, and President Monroe was that year almost unanimously re-elected. Political rivalry was still keen between the local Federalism and Democracy, but the bitter partisanship of the War of 1812 was over, and Fusion tickets for delegates were supported in several towns. Among those elected were the venerable John Adams and one other member of the last Convention; Chief Justice Parker; Judge Story of the Supreme Court of the United States; Lemuel Shaw, the future Chief Justice, and many experienced lawyers and politicians of both parties, such as Daniel Webster, Josiah Quincy, Joseph B. Varnum, William Sullivan, James T. Austin, George Bliss, future Governor Levi Lincoln, and General Henry A. S. Dearborn. After John Adams had declined the presidency of the Convention on account of his great age, Chief Justice Parker was elected by a majority of one, his nearest competitor being Judge Story. Party feeling was evident in this contest. Judge Parker, an ardent Federalist, had delivered so many political lectures on what the Convention ought not to do, in his charges to the grand juries during the fall term, that a sarcastic contributor to the *Boston Patriot* urged the Convention to delegate its powers to the Supreme Court and adjourn forthwith. Judge Story had Democratic antecedents. But no party feeling is evident in the debates. It was Samuel Dana of Groton, a leader of the old radical Democracy of Jefferson's time, who struck the keynote of this Convention on its opening day by saying "that the Constitution should be approached with great reverence, and that we should proceed with great caution." As President Parker afterwards admitted in a letter to Senator Otis, "the whole talent of the Democratic party was arrayed on the side of sound principle and good order." That the Federalist delegates presented a solid phalanx on the conservative side goes without saying.

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<sup>1</sup> Not including five delegates elected who did not take their seats.



Judge Story wrote of the Convention:—

There was a pretty strong body of Radicals, who seemed well disposed to get rid of all the great and fundamental barriers of the Constitution. Another class still more efficient and by no means small in number, was that of the lovers of the people, *alias* the lovers of popularity. . . . But after all these deductions, there was a strong body of sound, reflective, intelligent men, who listened and were convinced, and marched onward with a steady eye to the public good. On the whole, I never knew so great a number of men, who seemed to be so deliberative, upon whom argument produced so powerful and wholesome an effect, and who could be so completely taken away from their own obstinate prejudices.<sup>1</sup>

On November 16 the Convention adopted a set of forty-five rules and orders, and soon after voted itself the moderate compensation of \$2 per diem and two daily newspapers for each member, the latter being a common legislative perquisite in the nineteenth century. The method of procedure was then determined upon. All those parts of the Constitution of which there was any question of revision were divided among ten committees, appointed by the president, instructed to report to the Convention what amendments, if any, to those parts should in their opinion be adopted. Most of November 20 and 21 was passed in debating contested elections of delegates. As early as the 22d the committees began to report, and the rest of the Convention, up to and including its last session, on January 3, 1821, was spent in debating and amending its reports in committee of the whole.

Three different methods of submitting the Convention's work were discussed: (1) to incorporate all the amendments decided upon into the fundamental law, and submit this substantially new Constitution to the voters for acceptance or rejection; (2) to submit all the amendments in a lump; (3) to divide the alterations recommended by the Convention into a number of separate propositions, the popular acceptance of any one of which would be compatible with the rejection of all the rest, the accepted propositions to become amendments to the Constitution of 1780. The Convention of 1853 attempted a combination of the first and third methods, and fell between two stools. The Convention of 1820 adopted the third method,

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<sup>1</sup> *Life and Letters of Joseph Story*, I, 394.

although Josiah Quincy said it would be impossible for the people "to examine and discuss intelligently such a number of propositions."

The proposed amendments, accompanied by an address, were submitted for ratification to the qualified voters (not to universal suffrage, as in 1780) in fourteen propositions, to be voted upon April 9, 1821. A committee of the Convention was appointed to meet at the State House on May 24, count the votes, and declare such propositions as secured a majority to be ratified and accepted as amendments to the Constitution. The total vote for and against each article was to be certified by the committee to the Governor and the General Court, and those articles ratified were to be "promulgated and made known to the people in such manner as the General Court shall order."

The work of this Convention may be most conveniently grouped under the fourteen propositions it submitted.

The first was an amendment to the Declaration of Rights, Articles III and XII. It was not ratified. Much discussion was provoked by the proposed alteration of Article III, on the relations of church and State. It was a conservative amendment, simply deleting the second paragraph, on forced attendance at public worship; making clear and definite the principle of the fourth paragraph (which had been impaired by judicial decision), that every one had a right to pay his religious taxes to a pastor of his own denomination; and extending this right to Catholics. The connection of church and state, compulsory taxation for religious worship, and the advantageous position of the Congregational churches were unimpaired.

This very mild amendment did not go far enough for the more liberal (or perhaps Judge Story would have called it radical) section of the Convention. Old John Adams, to his eternal credit, proposed that "all men of all religions" be substituted in the fifth paragraph of Article III for "men of every denomination of Christians," as having the equal protection of the law. Childs of Pittsfield proposed an amendment similar to the Eleventh Amendment, adopted in 1833, withdrawing State support from the churches. Awful consequences to religion, morality, and to the State were predicted if the Childs amendment should be adopted, all ignoring the fact that Boston had had

the modern voluntary system since the coming of the Puritans. Leverett Saltonstall of Salem deemed voluntary support a "fearful experiment. . . . Our temples of worship will decay and fall around us. Those beautiful spires that now ornament our towns and villages will fall to the ground." Besides, depriving Congregational parishes of the right to tax all non-churchgoers and non-resident property-owners within their limits will impair a vested interest. "Corporate rights and privileges are sacred things. . . . I stand as in the presence of our ancestors; they conjure us not to destroy what they planted with so much care. . . . Let us not in one hour destroy the venerable work of two centuries! Above all, on this day, the anniversary of the landing of the Pilgrims," etc. Daniel Webster supported him, and the Childs amendment was twice rejected. But its adoption by the Convention would have served no purpose, for Proposition No. 1 as it stood was too radical for the people. It was rejected by a vote of 11,065 to 19,547, — Suffolk and Middlesex, Barnstable and the Island counties alone voting in favor.

Proposition No. 2, which was also rejected, provided that all State elections be held on the same date, the second Monday in November, instead of at different dates in April and May; and that the political year should commence the first Wednesday in January, instead of the last Wednesday in May. This would have the advantage of eliminating one session of the Legislature, for at the spring session hitherto the General Court had done little more than organize, elect the Council, etc., and then disperse in time to get in the hay. But the last week in May, "election week" or "anniversary week," had long been the gala season of Massachusetts, when religious and charitable associations held their annual conventions at the capital. This holy week of Protestants, as Dr. Holmes called it, was marked by many festivities of a jovial nature, culminating with Artillery election on Boston Common. In the Convention Daniel Webster defended the spring elections because they tended to keep State and national politics distinct. Josiah Quincy opposed any change "in a great institution established by our ancestors, at the first settlement of our country." In January "a snow storm, of the ancient violence and depth," might change the

whole political power of the State. And would the learned and religious societies change their annual convention to January? "As well take the warm and glowing sun of May from the sign in which he predominates at that season, and place him in the sign which rules the inverted year; as well take the flowers and green surface of June, and spread them as a carpet in January, as transfer the institution of the former period to those of the latter. It could not be done. Nature is against it." And the people apparently agreed with Mr. Quincy, for they rejected Proposition No. 2 by a vote of 14,164 to 16,728, in spite of a favorable vote from all the counties west of Worcester, and south and east of Plymouth. Yet only ten years later, in 1831, the people ratified Amendment X to the Constitution, almost identical with the second proposition of 1820, by a vote of three to one.

The third proposition, clearing up a doubtful point on the exercise of the Governor's veto, was adopted, and became the first amendment to the Constitution. Proposition No. 4, adopted as Amendment II by a vote of 14,368 to 14,306, empowered the General Court to grant city charters to towns of 12,000 inhabitants and over. Attachment of the people at large to the township system caused the narrow majority of 62 votes; only an overwhelming vote in Boston, whose 43,300 inhabitants had outgrown government by selectmen and town meetings, secured the adoption of this proposition.

Proposition No. 5 dealt with the thorny subject of the size of the General Court and apportionment of representation. It was practically identical with Amendment XIII, ratified in 1840, adopting a minimum unit and mean increasing number for representation, almost tenfold that of the original Constitution. In addition it proposed to make the counties senatorial districts, to prevent gerrymandering, and to adopt the old alternative for electing the Council (by the General Court, from the people at large) as the only method. It was in the debate on this clause that John Adams rose to suggest that the Council be elected by the people (as it has been since 1855), or abolished altogether.

Levi Lincoln proposed to apportion the Senators according to population (as also accomplished in Amendment XIII), not

wealth. "Property is incompetent to sustain a free government," he said. "Intelligence alone can uphold any free government." It was said that Suffolk County in 1820 had one Senator for every 7,500 inhabitants; Berkshire, one for every 20,000. This system was defended by John Adams as the only method to "render property secure," which he insisted was the "great object" of government, and by Judge Story in one of the longest and greatest speeches of the Convention. As it was, the people rejected Proposition No. 5 by a vote of two to one, and there is no reason to suppose that the Lincoln amendment would have rendered it more palatable.

Proposition No. 6, which became Amendment III to the Constitution, provided that all tax-paying citizens could vote for elective officers. It was first proposed, by John Keyes of Concord, to adopt universal male suffrage. His colleague Samuel Hoar strenuously opposed this, on the ground that the old property qualification stimulated young men to be sober and industrious. Universal suffrage "went directly to sap the foundations of society." Josiah Quincy made the more valid objection that Massachusetts was destined to become a manufacturing State, when the votes of the proletariat would be delivered by their employer. Thirty years later the secret ballot law was passed to remedy this abuse.

The Keyes resolution was defeated, 185 to 157, but reconsidered by a vote of 201 to 200, Daniel Webster, as chairman of the committee of the whole, giving his casting vote in the affirmative. George Blake of Boston then introduced the tax-paying qualification as an amendment, which was adopted; and Proposition No. 6 was ratified as Amendment III by a vote of 18,702 to 10,150, Bristol and Hampden counties alone opposing. This apparent extension of the franchise really made very little difference, as the old property qualification had long been a dead letter. The vote for Governor in 1822, the first year that Amendment III was in force, was smaller than for some years preceding.

Proposition No. 7, which was accepted by a small majority as Amendment IV to the Constitution, somewhat increased the appointing power of the Governor and Council at the expense of the General Court. The most popular of the Convention's

propositions was No. 8 (Amendment V), extending the right to vote for captains and "subalterns" of the militia to all members of their respective companies.

Proposition No. 9, on the judiciary, was the product of some of the master minds of the Convention; but was rejected by the people and never subsequently adopted. The report of the judiciary committee, signed by Judge Story, recommended that the "recall" provision in Chapter III be emasculated by requiring a vote of two-thirds of both Houses for the joint address recommending removal.

In the debates, Lemuel Shaw and Daniel Webster defended this limitation on the ground that the judiciary could never be independent while subject to removal by a legislative majority.<sup>1</sup> Levi Lincoln "was entirely satisfied with the Constitution as it was. He had never heard till now, and was now surprised to hear, that there was any want of independence in the judiciary." A compromise was finally agreed upon to the effect that no joint address for removal of a judge should be passed without cause shown and opportunity given to be heard in his defence. James T. Austin, the future Attorney-General, opposed even this change. "While we secure the independence of the judges, we should remember that they are but men, and sometimes mere partisans. He had heard of men being elevated to high judicial stations, not because they were the most able and the most learned, but because they stood in the front ranks of their party." The Story committee also recommended that the Legislature be empowered to establish a supreme court of equity. The Convention negatived this, but incorporated with Proposition No. 9 a provision for the removal of justices of the peace, in the same way as judges; and the elimination from the Constitution of Chapter III, Article II, on the giving of advisory opinions by the justices of the Supreme Judicial Court.<sup>2</sup> The people rejected Proposition No. 9 by a vote of 12,471 to 14,518.

The Tenth Proposition referred to Harvard University, and was also rejected. Chapter V of the Constitution was originally

<sup>1</sup> It was not claimed that the Legislature had abused the power of recall. Only three judges had been recalled before 1820, — a justice of the Supreme Judicial Court for disability, and two judges of the Court of Common Pleas for extortion in office.

<sup>2</sup> Four reasons for this are given in the address of the Convention.

referred to a committee of which Josiah Quincy, the future president of the University, was chairman. He reported no alteration expedient, and argued that the college charter of 1642 was inviolable, even by constitutional amendment. This did not satisfy the Convention, which appointed a committee of five to inquire into and report upon the constitutional rights and privileges of the college, and the state of the donations made it by the Commonwealth. The report of this committee, signed by Daniel Webster, gave a brief account of the college funds and donations, which turned out to be unexpectedly small, and confirmed the statement of Josiah Quincy regarding the sanctity of the charter. Having asked and obtained the requisite consent from the college corporation and board of overseers, the committee recommended that Article V of the State Constitution be amended by opening the clerical places on the board (then confined to ministers of Congregational churches) to ministers of every denomination of Christians. This was accordingly adopted as Proposition No. 10, which the people rejected by an unaccountably heavy vote, Suffolk County alone being in favor.

The Eleventh and Twelfth Propositions, adopted as Amendments VI and VII, substituted a single oath of allegiance to the Commonwealth of Massachusetts for the complicated politico-religious oaths of office in Chapter VI, Article I. Like other questions involving religion, this one caused considerable discussion on both sides, several members being in favor of retaining the old tests. "We have agreed," states the Convention's address, "that the declaration of belief in the Christian religion ought not to be required in the future; because we do not think the assuming of civil office a suitable occasion for so declaring; and because it is implied, that every man who is accepted for office, in this community, must have such sentiments of religious duty as relate to his fitness for the place to which he is called."

The Thirteenth Proposition, ratified as Amendment VIII to the Constitution, prohibited certain pluralities overlooked in 1780, as well as the holding of certain Federal and State offices by the same person.

The Fourteenth Proposition, adopted in Amendment IX, provided the regular system of amending the Constitution

which is still in force. It differed from the original form in Daniel Webster's committee report in that the latter required the assent of "two-thirds of the members of both houses" to propose an amendment, and a "majority of the qualified voters" to ratify it. This last requirement was struck out, for it would have made the amendment of the Constitution practically impossible. Webster also consented to substitute a "majority of the senators and two-thirds of the house of representatives present and voting thereon" for the first part, Quincy and Austin opposing, Lincoln and Varnum supporting, the chairman.

After the returns had been duly corrected and certified by the Convention's committee, Governor Brooks, on June 5, 1821, declared the first nine amendments to the Constitution adopted. The Convention of 1820, then, was a success. Nine of its fourteen propositions were immediately adopted, and three others were substantially adopted within the next twenty years. Furthermore, the door for all future amendments was opened by Amendment IX. But the ostensible reason for summoning the Convention, the difficulty over the Senate, following the separation of Maine, was almost overlooked by the Convention itself, and finally incorporated in a proposition that the people refused to accept.

### 3. PERIOD 1821-1850.

The first two amendments to the Constitution adopted under Article IX were of the highest importance. Amendment X (1831) was the same as Proposition No. 2 of the Convention of 1820. It altered the beginning of the political year from the traditional last Wednesday in May to the first Wednesday in January, where it still remains, and placed all the State elections for the first time on the same date, the second Monday in November. Amendment XI, adopted in 1833, withdrew State support from the churches. It permitted religious societies to tax their own members (a right finally withdrawn by Chapter 419, Laws of 1887), but defined members in such a way that an equality of sects was established, and church separated from State. All the unwilling members of the old Congregational parishes were now permitted to withdraw their membership at will, and not required to join any other parish. "And no



person shall hereafter be made . . . a member of any parish or religious society, so as to be liable to be taxed therein for the support of public worship . . . without his express consent for that purpose first had and obtained.”<sup>1</sup>

In the meantime the old system of representation was becoming more and more unsatisfactory, leading to an abortive movement for a convention, to amendments that merely complicated matters, and finally to the Convention of 1853.

The size of the House of Representatives ebbed from its high mark in 1812, when the act paying members' salaries out of the State treasury was repealed. During the next decade it fluctuated between 160 and 398. As long as the expense of membership fell on the towns, they exercised their franchise sparingly and irregularly. When the public treasury again undertook the burden, the size of the House again passed 600, the session lengthened out, and annual expenses increased fivefold.

This condition of affairs became almost an annual subject of unfavorable comment in the Governor's message, and of agitation in the press and the General Court. If a remedial amendment passed the Legislature, it stimulated the small towns to send enough members to the next Legislature to prevent its getting before the people. A new constitutional convention seemed the only remedy.

On January 10, 1833, the House ordered a committee to consider the propriety of taking the sense of the people on holding a convention to amend that part of the Constitution relating to representation. A week later Robert Rantoul, chairman of the committee, reported in favor of it. He was strongly of the opinion that the House could never be persuaded to adopt a reform that would cost some of its members their places. And if a constitutional convention is authorized “it will be inexpedient to attempt to impose any restriction upon its deliberations. The whole Constitution must pass under revision. . . . The present time is exceedingly favorable to a calm consideration of this important subject, and that further delay may bring us to a period of strong party feeling, and of great political excitement . . . when amendments of the Constitution will be

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<sup>1</sup> Partly quoted from the act of April 1, 1834, which was passed to carry out the purpose of Amendment XI. The vote on this amendment was 32,234 to 3,372, the largest relative majority for any constitutional amendment ever ratified in Massachusetts.

attempted under less favorable circumstances than at present." A bill similar to that of 1820 was submitted with the report.<sup>1</sup>

In the meantime the House had requested the justices of the Supreme Judicial Court to give their opinions on two questions: First, whether an act of the Legislature which should provide for taking the sense of the people on holding a convention for revising some specified part of the Constitution could restrain such convention from proposing amendments to other parts of the Constitution? Second, can any specific amendment to the Constitution be made in any other manner than that prescribed in Amendment X? Chief Justice Shaw and Justices Putnam, Wilde, and Morton replied on January 24, 1833, that under the Constitution the second question must be answered in the negative. As to the first, a constitutional convention, being extra-constitutional, would derive all its power from the popular vote, and be bound by its terms.<sup>2</sup> The justices, it will be noted, expressed no opinion on the question whether a convention might be called for a general revision, as the committee proposed.<sup>3</sup> After the opinion was delivered, the bill in question passed a second and a third reading, but was then indefinitely postponed.

The convention question came up again in 1834. A bill was proposed that year, in defiance of the opinion of the justices, proposing to limit the competency of the convention on whose summons the sense of the people was asked to amending the articles of the Constitution on representation.<sup>4</sup> This bill was indefinitely postponed on March 13, by a vote of 183 to 128, and the convention movement slumbered fifteen years.

The reform of the representative system by a single amendment was again attempted. The Legislatures of 1835-1836 passed Amendment XII, which was ratified the same year, — the first reform in representation since 1780. The old unit of representation and mean increasing number were doubled. Towns having less than 300 ratable polls could either elect a

<sup>1</sup> House Document No. 11, 1833.

<sup>2</sup> 6 Cushing, 573, House Document No. 17, 1833.

<sup>3</sup> The Rhode Island opinion of 1883 (14 R. I. 649) is the unique authority for the view that a convention cannot be called without special provision in the Constitution for it, a view contrary to the general practice of the States. Over thirty constitutional conventions have met in the United States without any authority in the constitution for their assembling.

<sup>4</sup> House Document No. 67, 1834; House Journal for 1834, 433.

representative at stated intervals (see Paragraph 2 of the amendment), or combine with other towns to form a representative district, — an opening wedge for the district system.

But Amendment XII did not reduce the membership of the House below 500, and hence led to Amendment XIII in 1840, which substituted inhabitants for ratable polls as a basis of representation, and made other changes in the system which satisfied nobody. The existing senatorial districts were made permanent, and Senators were assigned to them according to the number of inhabitants. The old property apportionment, which John Adams and Theophilus Parsons considered a necessary balance in a republic, was abolished. Amendment XIII also adopted the system of electing the Council recommended by the Convention of 1820, and abolished property qualifications for Councillors, Representatives, and Senators.

#### 4. THE CONSTITUTIONAL CONVENTION OF 1853.

##### (a) *Origin, 1850-1853.*

The Constitutional Convention of 1853 arose mainly out of dissatisfaction with the system of representation, and was promoted by a new dispensation in State politics. At the election of 1850 the Democratic party and the Free-Soil party, or "Conscience Whigs," formed a working agreement known as the "Coalition," which prevented the Whig candidate for Governor from polling a majority, secured control of the Legislature, elected the Democratic candidate (George S. Boutwell) Governor, and sent a Free-Soiler (Charles Sumner) to the United States Senate. The strength of the Coalition lay in the interior of the State, which was becoming somewhat apprehensive of the growth of the manufacturing towns, and their consequent growth of representation under Amendment XIII. Another source of dissatisfaction was the fact that the larger counties and cities, as well as the smaller counties and towns, elected their Senators and Representatives on a general ticket. Middlesex County and Boston, both strong Whig units, could be depended upon to elect six Whig Senators and forty-five Whig Representatives every year.

Governor Boutwell called attention to these "inequalities" of representation in his inaugural message of January, 1851.

Before the month was over a joint committee was appointed to report a "more equal and just system of representation." On March 26, 1851, this committee reported a draft amendment which lowered the minimum population entitling a town to one Representative annually, and enlarged the "mean increasing number." Obviously this favored the small towns at the expense of the larger ones. The *Boston Daily Advertiser* computed that it would give 119 Representatives to 139 towns with about 140,000 inhabitants and the same number to 40 towns and cities with about 500,000 inhabitants. The amendment did not secure the necessary two-thirds majority in the House. Immediately after its failure, a bill was introduced into the Senate for taking the sense of the people on calling a constitutional convention. Like ordinary bills, this required only a bare majority of both Houses to become a law. The Whig press proclaimed it a case of *post hoc propter hoc*; the Coalition press insisted that a change in representation was only one of many desirable constitutional reforms.

The constitutional convention bill became a law on May 24, 1851, and was voted on at the regular State election on November 10. The result was 60,972 in favor, 65,846 opposed. Plymouth, Worcester, and Franklin counties were the only ones to cast a favorable vote. But, acting on the advice of Governor Boutwell, the proposition was renewed in the next Legislature. A joint special committee, which included two leading Coalitionists, Whiting Griswold and Anson Burlingame, made a long report in favor of a constitutional convention, with a new bill to that effect. The committee undertook to "point out only those parts of the Constitution, where palpable defects exist." It demanded the usual changes in the representative system; the election of more officials by the people; a limitation of legislative sessions to one hundred days; the prohibition of special acts of incorporation; "the plurality system in more of our elections;" abolition of "the present cumbersome, formal mode of organizing" the government; popular election of justices of the peace, and limitation of their term and jurisdiction; State elections on the same date as national elections; and a reservation of certain sources of income for a school fund. It believed no change in the judiciary necessary, that branch of the government having been entirely satisfactory.

The committee urged a constitutional convention as the only

proper means to secure so general a revision as seemed to them necessary. "We can think of nothing more rash or dangerous, than for the Legislature, in connection with the hundreds of other subjects which press upon its attention, to enter at the same time upon a general revision of the Constitution." Many citizens, eminently qualified for a constitutional convention, such as judges, professors, men of affairs, are either legally or practically ineligible to the Legislature. Then follows a long argument in favor of the constitutionality of a constitutional convention, notwithstanding other provisions for amendment in the Constitution.<sup>1</sup>

The bill reported by this committee became law on May 7, 1852. It provided for taking the sense of the people, at the State election in November, on holding a convention. In the meantime there was published a legislative report, signed by Amasa Walker of North Brookfield, of a nature to alarm the small towns. It gave the representation in the House by towns, under the censuses of 1840 and 1850, and predicted what it would be under the censuses of 1860 and 1870. Franklin County had nine towns entitled to elect a Representative annually between 1840 and 1850. It was predicted that the number would fall to two by 1870. Similar decreases were predicted in all the rural counties. This report was reprinted and widely circulated in a pamphlet, which was probably responsible for a favorable vote on that question in the November election of 1852. The total vote fell short of that of 1851, but there was a notable shift to the favorable side in the rural counties. The result was 66,416 yeas, 59,112 nays.

At the same election a Whig administration, hostile to the convention, was chosen. Governor Clifford, in his inaugural address of January, 1853, after alluding to the great increase of expense caused by the Coalition Legislatures of the last two years, remarked:—

Impressed as I am with the conviction that the law passed at the last session, providing for the calling of such convention, is at least of doubtful constitutionality,—that all the amendments that are really desirable could be made in the manner prescribed for its own amendment in the Constitution itself, . . . I cannot refrain from expressing a regret,

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<sup>1</sup> Report of the joint special committee of the Legislature of 1852 in favor of a convention to revise the Constitution.

that for such an object an additional burden should at this moment have been cast upon the treasury.

Acting upon this hint, and urged to it by the Whig press, the Legislature made some preliminary motions toward repealing the act of May 7, 1852, thus preventing the calling of a convention. But in the end nothing was done, and the election of delegates took place according to law on March 7, 1853.

According to the act of May 7, 1852, every town and city was allowed to send as many delegates to the Convention as it had a right to elect Representatives the last valuation year. This meant that the smallest town could send at least one, and all but five or six did so. The Convention of 1853, like its predecessor, was empowered to draw upon the State treasury for whatever pay and expenses it chose to establish, and to determine its own mode of submitting and ratifying its work.

(b) *Character, Organization, Procedure, and Method of Submission.*

The Convention of 1853 began and ended in politics. The Whig party opposed the calling of it, both in 1851 and 1852, and opposed the ratification of its work. The coalition of Democratic and Free-Soil parties was in favor of calling it and of ratifying the proposed Constitution of 1853.<sup>1</sup>

<sup>1</sup> The following returns, from the *Boston Daily Advertiser*, indicate the close correspondence between the vote on the constitutional question in the elections of 1851, 1852, and 1853, and the vote for Governor the same date. The vote of 1853 is on the draft constitution submitted by the Convention. The returns differ slightly from the official ones in the State archives.

		CONSTITUTIONAL QUESTION.		VOTE FOR GOVERNOR AT SAME ELECTION.	
		Yea.	Nay.	Free-Soil and Democratic Tickets.	Whig Ticket.
1851	Boston, . . . . . Worcester County, . . . . .	3,813 11,032	7,135 7,537	4,926 13,307	7,338 7,960
1852	Boston, . . . . . Worcester County, . . . . .	3,418 9,646	6,372 5,586	4,321 13,059	7,635 7,067
1853	Boston, . . . . . Worcester County, . . . . .	3,228 12,539	9,023 7,456	3,858 13,589	7,730 7,289

Both parties nominated slates in most parts of the State, and a "Democratic Constitutional Platform" was published in the *Boston Post*. Four hundred and twenty-two delegates in all were elected,<sup>1</sup> and of these the Coalition secured a comfortable majority. Nathaniel P. Banks, Jr., then a prominent Free-Soil leader, was elected president of the Convention, having 250 votes to 137 for the Whig candidate, Ex-Governor George W. Briggs. As there was no residence requirement for delegates, several prominent politicians who feared defeat in their home towns, especially the Democratic and Coalition leaders of Whig Boston, received election elsewhere. Charles Sumner was elected by Marshfield, and Benjamin F. Hallett, a leader of the old "hunker" Democracy, by Wilbraham; Richard H. Dana, Jr., and Anson Burlingame, both Free-Soilers of Cambridge, by Manchester and Northborough. Whiting Griswold of Greenfield, the chief promoter of the Convention, was sent by Erving in the same county. Henry Wilson, the "Natick cobbler," took the precaution to run both in his home town and Berlin. He was elected in both, but resigned the Berlin seat, which was then tendered to Ex-Governor Boutwell, who had been defeated in his own residence, Groton.

The Convention assembled at the old Representatives' Chamber in the State House on May 4, 1853. About two weeks were spent in organizing, contesting disputed elections, deciding on rules of procedure, voting salaries and perquisites,<sup>2</sup> and discussing the "form of notice to the Town of Berlin." Every step was stoutly contested. It was the golden age of American oratory, and several members of the Convention appeared to be laboring under the delusion that the mantle of Daniel Webster had fallen upon them. Yet the Convention of 1853 undoubtedly contained the most brilliant assemblage of orators the State has ever seen, and several statesmen as well. Beside those above mentioned, there were present on the Coalition side Benjamin F. Butler, one of the most picturesque characters in our history; Francis W. Bird of Walpole, later an organizer of the Republican

<sup>1</sup> This was 16 short of the total number that might have been elected. Only 419 delegates eventually took their seats.

<sup>2</sup> The Convention incurred much criticism by voting itself \$3 per day per member, which was fifty per cent higher than the salaries of the last Convention or of the House of Representatives. The total expense of the Convention was \$117,000.

party; Ex-Governor Marcus Morton of Taunton, and his son Marcus Morton, Jr., the future Chief Justice; and Robert Rantoul, a member of the Convention of 1820.

On the Whig, or Conservative side, Boston sent a solid delegation, including Rufus Choate, who increased his already great reputation for public speaking; George S. Hillard, of the flowery school of oratory; William Schouler, later Adjutant-General, and Nathan Hale, the editor of the *Advertiser*. Cambridge sent the only two professors in the Convention, Joel Parker and Simon Greenleaf, of the Harvard Law School, but Dana notes in his journal that they "had less influence than the two mercantile members from the same town." Otis P. Lord of Salem was another influential Conservative. It cannot be said that this Convention represented the intelligence of the Commonwealth as well as its predecessors. In 1853 Massachusetts was leading the progressive thought of the nation with such men as Garrison, Phillips, Whittier, Emerson, Horace Mann, and Samuel G. Howe; but this group had few points of contact with politics, and its sole representative in the Convention was the Rev. William B. Greene of Brookfield, transcendentalist, mathematician, and soldier, who shocked his colleagues with a speech in favor of woman suffrage.

Nor can it be said that the Convention adequately represented the classes in the community. Massachusetts was already a manufacturing State; but the rapidly increasing laboring class had not yet developed leaders of its own. Out of a population just short of a million, there were about 200,000 foreign born in the State, the greater part of whom were Irish. Only seven members of the Convention were foreign born, and Robert T. Davis of Fall River was the solitary Irishman present. In all there were 35 artisans, 42 manufacturers, 65 merchants and traders, 73 lawyers, and 128 farmers. The Convention contained more self-made men, like Banks, Butler, and Wilson, than its predecessor; but on the whole it represented the same mercantile, maritime, and farming Bay State of Revolutionary stock and strong native traditions — the old order that was passing.

In its procedure the Convention followed its predecessor. The Constitution was divided into fifteen sections, each of which was



referred to a standing committee appointed by the Chair, with instructions to report in printed form whatever alteration, if any, it proposed to make therein.<sup>1</sup> The reports were subsequently discussed in committee of the whole, amendments being offered from the floor, and often by a minority of the committee. The thirty-five changes adopted in the Constitution were embodied in a series of brief orders or resolves, which were referred to a committee of thirteen, George S. Boutwell, chairman, with instructions "to reduce the amendments of the Constitution to the form in which it will be proper to submit the same to the people for ratification."<sup>2</sup>

It was this committee that devised the unfortunate method of submitting this Convention's work. Most, but not all, of the thirty-five changes were embodied in the Constitution of 1780, together with the thirteen amendments already adopted, the whole making a new Constitution to submit to the voters. Seven proposed changes were not incorporated in the new Constitution, but submitted as separate amendments.

Following the precedent of 1779, the drafting of the new Constitution was delegated to a subcommittee of three, consisting of Professor Parker, Boutwell, and Dana, the last two performing the work. Their problem was to eliminate from the Constitution of 1780 all that had already been annulled by the thirteen amendments, and all that would be annulled by the thirty-five new changes. They must also clothe the thirty-five changes in constitutional language, the Convention having merely adopted bare principles. This complicated and exacting task was completed by Dana and Boutwell at 10.30 P.M., Sunday, July 31, after a twelve-hour session at the latter's room at the Adams House.<sup>3</sup>

During the Convention there was an interesting debate on the electorate to which its work should be submitted. The act of May 7, 1852, said that it "shall be submitted to the people for their ratification and adoption, in such manner as the said Convention shall direct."<sup>4</sup> Early in the sessions, William B.

<sup>1</sup> *Debates*, I, 11, 88. All references to the *Debates of the Convention of 1853* in this article are to the three-volume edition. The rules and orders are in *Debates*, I, 60-64, and in a separate manual.

<sup>2</sup> *Journal of the Convention*, 138, 143.

<sup>3</sup> *Debates*, III, 655; Adams' *Dana*, I, 243-249.

<sup>4</sup> *Debates*, III, 732.

Greene presented a petition of Mrs. Abby B. Alcott (wife of the Concord philosopher) and 73 other women to the effect that, being "people," they might be permitted to vote on the new constitution.<sup>1</sup> There followed an interesting debate on "Who are People?" on woman suffrage, and on the advisability and constitutionality of submitting the new constitution to a wider electorate than already existed. No one seems to have brought up the excellent precedent for such action in the submission of the Constitutions of 1778 and 1780 to adult male suffrage at a time when a property qualification was required for voting.

(c) *Debates, Rejected Constitution of 1853, and Additional Propositions.*

It will be most convenient to describe the work of the Convention of 1853 by taking up in order what was new in the draft Constitution which it submitted to the legal voters.

Little change was made in the Declaration of Rights beyond altering Article XXIX to conform to the new judicial tenure. Richard H. Dana, a member of the committee on the Declaration, wrote in his diary:—

In our committee (Bill of Rights) we resolved not to attempt to rewrite the instrument, and only to make necessary changes. We discussed the principle of the "Social Compact" which is set forth in it, and we found not one man who believed in it. . . . It is a mere fiction, which served its turn against tyranny, but cannot stand examination. Still, we could not alter that without altering the entire phraseology, which might peril the Constitution before the people.<sup>2</sup>

A minority report of the same committee, signed by its chairman (Sumner), Hallett, Burlingame, and Hillard, requested that in Article II the words "for his religious profession or sentiments concerning religion" be substituted for "for his religious profession or sentiments." Their object was to prevent a recurrence of the notorious trial of Abner Kneeland, who a few years before had been imprisoned two months for saying that the God of the Universalists "is nothing more than a chimera of their own imagination." Hallett, who had defended Kneeland, defended the principle before the Convention, but without success.<sup>3</sup> The same minority also proposed an article giving juries

<sup>1</sup> *Debates*, I, 216.

<sup>2</sup> *Adams' Dana*, I, 235.

<sup>3</sup> *Debates*, III, 416.

the right to determine the law as well as the facts in criminal trials. On this there was a long and interesting debate, full of legal theory and citations from the judicial history of the Commonwealth, between Butler, Hallett, Burlingame, and Judge Allen for the affirmative, and Sumner, Dana, Professor Parker, and John Chipman Gray the elder for the negative.<sup>1</sup> The article finally passed in amended form, but was submitted to the people as Proposition No. 3, instead of as a part of the Declaration of Rights. The same disposition was made of an article forbidding imprisonment for debt.

Chapter I of the new Constitution corresponded to Chapter I, Section I, of the old. The only new clause provided for members' salaries by standing laws, and limited the length of sessions to one hundred days, — a requirement commonly found in State constitutions both then and now.

Chapter II provided a Senate of forty members, apportioned according to population and elected by single districts of equal population. The committee, through its chairman Henry Wilson, defended the population basis against the legal voters basis, subsequently adopted by Amendment XXII (and still in force), as the only just rule. He insisted that the unnaturalized foreign-born population and the 10,000 factory girls of Lowell had a right to be fully represented because they were taxed, even though they could not vote. His view was finally adopted, after a long debate that went down to first principles.<sup>2</sup>

Chapter III, on the House of Representatives, proposed to settle the question that had agitated State politics for thirty years by a compromise between two contrary theories and systems, — town representation and district representation. The Convention, it will be remembered, had been promoted largely by those who wished to turn the balance of power in favor of the country towns. Whiting Griswold, the leader of this movement, was appointed by President Banks chairman of the com-

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<sup>1</sup> *Debates*, III, 430, 437-463, 497-517. Hallett argued that the amendment merely recognized the old common law, which had been overridden in the case of *Commonwealth v. Porter*, in which he had been attorney for the defendant. Dana remarked: "The gentleman from Wilbraham is a little disposed . . . to make this Convention a court of errors, to rectify the decisions of courts given in cases which he has lost. . . . He would make this Convention hinge on the *Dorr* controversy, and Abner Kneeland and Zachary Porter."

<sup>2</sup> *Debates*, I, 190-212.

mittee on the House of Representatives. The majority report, presented by him on June 14, made the Convention gasp for breath. It proposed that every town, no matter how small, might elect one Representative every year; that a town of 5,000 inhabitants elect two and that 5,000 be the mean increasing number giving an additional Representative, — except that no city, however large, should have more than thirty. The minority report of the committee, presented by William Schouler of Boston, proposed substantially the system in force to-day, whereby the towns are combined and the large cities are divided into representative districts of equal population.

The long debate on representation completely upset all previous values of radical and conservative. The reform Coalition party defended the reactionary scheme of town representation which Griswold introduced with fifty columns of rhetoric replete with historical argument, and with an appeal to return to the ancient system of the Pilgrims and the Puritans, — the system into which Amendments XII and XIII had already driven an opening wedge.<sup>1</sup> The conservative party, led by Rufus Choate, supported the district system, by which every section of the Commonwealth would be equally represented according to population. At bottom it was simply the old sectional struggle between town and country. As the conservatives still controlled the cities and manufacturing towns, they proposed a radical change which would increase their power. And as the rural towns, true to their traditions of Shays' time, supported the radical Coalition party, that party promoted a reactionary change to intrench itself in power. As Robert Rantoul showed in debate, the Griswold system would enable two hundred small towns, with less than one-fourth the total population, to elect one-half the Representatives.<sup>2</sup>

All the ablest orators in the Convention participated in this debate, the inconsistent position of each side giving abundant opportunity for deft thrusts and sharp sarcasm. It is humorous to-day to find Benjamin F. Butler, who entered politics as the spokesman of the factory operatives of Lowell, arguing for a practical disenfranchisement of his own constituents, while Rufus Choate, who loved the "rust of the Constitution" and

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<sup>1</sup> *Debates*, I, 809-835.

<sup>2</sup> *Debates*, I, 846.

cherished the ancient institutions of New England, advocated the equal and democratic district system that eventually broke the power of the Whig oligarchy whose chosen spokesman he was.

In this debate occurred the memorable passage between Richard H. Dana, Jr., and George S. Hillard. Dana, on June 17, made one of the greatest speeches of the Convention,<sup>1</sup> in which everything that could be said in favor of town representation was said. The best Representatives, he maintained, came from the towns, because chosen by a deliberative assembly, the town meeting. If the town unit is abandoned for the larger districts, members of the House will be chosen in district conventions by the party machine. Furthermore, the absolute equality of the district system would work injustice to the country towns. An enormous concentration of wealth and population was taking place in the cities. The country was being sucked dry. Already the Convention had provided for a Senate based on population, and a Governor and Council elected by a majority. Some check was needed in the House in order to protect rural and farming interests against corporate wealth, the proletariat and the foreign born. "It is a mistake to treat the one million inhabitants of Massachusetts as if they were so many units. They are formed into organizations and communities, having common interests and objects, and some of these are one hundred times stronger than others."

On June 23, George S. Hillard, who represented the social and literary élite of Boston, made a glowing defence of the civic virtue and bountiful charity of the wealthy men of the capital, in the course of which he rebuked Dana with a phrase that stuck to its author the rest of his life: "The gentleman from Manchester, in the course of his remarks, let fall a drop or two of blistering dew upon the city of Boston. I winced a little at that portion of his speech. . . . I am sorry that he should have cast one stick upon a fire, out of whose heat none but vipers can come. As the bread that he and I both eat comes from the business community of Boston; from men, some of whom are rich and all of whom hope to be rich, it does not become us, like froward children, to strike at the hand that feeds us." To

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<sup>1</sup> *Debates*, I, 941-949.

which Dana replied: "The hand that feeds us! The hand that feeds us! Sir, no hand feeds me that has any right to control my opinions!"<sup>1</sup>

After many more days of debate the Convention adopted a system of town representation not quite so raw as that of the "gentleman from Greenfield, for Erving." According to Chapter III, Article II, of the new Constitution, every town of less than 1,000 inhabitants may elect one Representative in the valuation year, and, in addition, one Representative five years in every ten; every town between 1,000 and 4,000 may elect one Representative, and 4,000 shall be the mean increasing number; towns of less than 1,000 may combine in order to elect a Representative every year; and cities must be divided into districts electing not more than three Representatives each. As a sop to the cities, Chapter XIV, Article IV, required the Legislature of 1856 to submit to the people an amendment adopting the pure district system.

Marcus Morton estimated that Chapter III, Article II, would give five Representatives to New Bedford, with a population of 16,441, and thirty Representatives to thirty towns with an aggregate of 16,292; three Representatives to Fall River, with a population of 11,170, and twenty-three Representatives to twenty-three towns with an aggregate of 11,308.

Chapters IV and V, on the Governor and Lieutenant-Governor, dropped the old titles and property qualifications, but made no other change in the Constitution of 1780. The Governor's power was diminished in another chapter by lessening his patronage.

Benjamin F. Hallett, as spokesman of the Convention committee on the Governor's Council, recommended the abolition of that body. He proposed to assign its advisory and confirming powers to the Senate (as in the Constitution of the United States and most State constitutions) and to a pardoning board, its financial powers to the Auditor, and its other duties to the Governor.<sup>2</sup> But the Convention, as usual, refused to take back its action. The bugaboo of "one-man power" was revived by Edward L. Keyes of Dedham. To abolish the Council would make the Governor a "Louis Napoleon." He repudiated the

<sup>1</sup> *Debates*, II, 129, 130.

<sup>2</sup> *Debates*, I, 338.

popular idea "that this Council have nothing to do, during the long sessions but to tell stories and read the newspapers." It saves its expense many times over by examining the accounts.<sup>1</sup> Ex-Governor Boutwell's testimony as to the usefulness of the Council carried weight. After much lachrymose eloquence on the pardoning power, the Convention decided to retain the Council but have it elected by the people. Chapter VI of the Constitution of 1853 made this proposal, which was later incorporated by Article XVI.

During the Revolution the doctrine that all officials, executive, county, and judicial, should be elected by the people, was popular in Massachusetts. Many towns in 1780 objected to the Constitution because of the wide appointive powers given the Governor and Legislature. This feeling never entirely died out, and in the second quarter of the nineteenth century it was adopted by Jacksonian Democracy. Beginning with Mississippi in 1832, the States one after another amended their constitutions to introduce popular election of State secretary, treasurer and minor executive officials, sheriffs and other county officials, justices of the peace and the entire judiciary. After sweeping through the rest of the country, this movement reached its culmination in Massachusetts in the Convention of 1853. The amendments then submitted were rejected, but later some of the changes suggested at that time were adopted.

Chapter VII provided for the annual election of the Secretary, Treasurer, Auditor, and Attorney-General; and for triennial election of all county officials, including judges of probate. Little opposition was offered, save in the last-mentioned item, which ran up against the general reluctance to alter the judicial tenure. In the debate George S. Hillard cut back at his opponents, who had been taunting him with the unfortunate "hand that feeds us" phrase. Benjamin F. Butler, complaining of the arrogance of judges of probate, remarked that "one of the best methods of polishing the manners of some of our judges is to subject their office to the popular vote." Hillard replied: —

The occupation of a judge is trying to the patience and the spirits. . . . Especially is he tried by the bad manners of a portion of the bar. . . . There are men at the bar . . . whose professional bearing is marked by

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<sup>1</sup> *Debates*, I, 449-456.

coarse brutality and foul-mouthed ferocity . . . who import their morals from the State Prison, their manners from a bear-garden, and their language from Billingsgate. Who has not seen lawyers of this stamp swaggering about a court-house, with the port and bearing of a bar-room bully, after his second mug of flip, insulting witnesses, treating the opposing counsel with indignities studied and unstudied — and especially hectoring and browbeating the bench? . . . So long as we have jackals and hyænas at the bar, I hope we shall have a lion on the bench, who with one stroke of his vigorous paw, can, if need be, bring their scalps right down over their eyes.<sup>1</sup>

Marcus Morton, ex-justice of the Supreme Judicial Court, was chairman of the committee on the judiciary, which, by exception, included no prominent Radical. Its report proposed no other amendment to Chapter III than the abolition of Article II, on judicial opinions. This fell short of the wishes of the Convention. Henry Wilson at once proposed an amendment for the appointment of judges of the Supreme Judicial Court for a ten-year term, and other judges for a seven-year term, all to be eligible for reappointment until seventy years of age.<sup>2</sup> Dr. Foster Hooper of Fall River proposed to have all judges elected by the people for seven years. On these three proposals came one of the most prolonged and interesting debates of the Convention. "All are united in regard to the importance of securing and possessing an independent, able and learned judiciary," said Henry Wilson. He deemed "an elective judiciary more in accordance with the theory of our democratic institutions, more in harmony with the genius and spirit of our American ideas," but did "not think the people ready to adopt such a system." Furthermore, the studious avoidance by the reformers of any reference to the judiciary during the struggle to bring about the Convention imposed upon them the obligation not to press an elective system in the Convention.<sup>3</sup> But he offered no positive argument for his amendment. Dana made one of his best speeches in favor of retaining the old system.<sup>4</sup> "Is it not a fundamental maxim of America, that no change should be made until you find an existing evil to be remedied? . . . Is there any abuse existing? Has any man heard of an abuse? . . . Have we any indication that the public wishes any change here?" In

<sup>1</sup> *Debates*, II, 259, 474, 528.

<sup>2</sup> *Debates*, II, 684.

<sup>3</sup> *Debates*, II, 703, 704.

<sup>4</sup> *Debates*, II, 756-770.



New York, and the other States that elect their judges, the judiciary has "fallen into the political cauldron." New York's action was excusable, for she had suffered under her old judicial system; but we have not suffered. The infrequent exercise of the power of removal proves it. He concluded by comparing Dr. Hooper and Mr. Wilson to two surgeons who seize a man in health to try experiments on him, and yet cannot agree upon what they shall do.

In spite of Dana's challenge for complaints against the judiciary, nothing but trivial and irrelevant charges, including the curious one that the judges had not yielded to local opinion in the Sims fugitive slave case, were preferred in the debate. Rufus Choate brought his powerful eloquence to the defence in his great oration on the good and upright judge.<sup>1</sup> Francis W. Bird of Walpole made a strong argument in favor of the elective judiciary, which he considered "just as inevitable and just as necessary as an elective governor and legislature have been in times past."<sup>2</sup> Benjamin F. Hallett called the Massachusetts Bench irresponsible; it needed accountability, — "give me accountability." As judges are "not only independent of the people, but independent of good manners; independent, if they choose to be, of their own consciences and convictions; independent of any errors which they may make in judgment; independent of the grossest partiality, in fact of everything but crime, while they may be dependent upon, and may, unconsciously and honestly yield to the political and social influences that surround them — these cliques, these clubs, those circles, that are drawn around them as men and politicians before they are judges, and under the influence of which they go upon the bench."<sup>3</sup>

At the close of this speech, on July 14, the Hooper amendment was defeated by a vote of 101 to 226, and the Wilson amendment, after a close race was at last rejected by a vote of 158 to 160. "The rejoicings and congratulations of the Boston members and the conservative men generally knew no bounds," writes Dana. "The judiciary question was considered as settled," he continues, "and many of the reformers told me

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<sup>1</sup> *Debates*, II, 799-810; *Works of Rufus Choate*, II.

<sup>2</sup> *Debates*, II, 818.

<sup>3</sup> *Debates*, II, 828.

they were satisfied with the result. . . . But the newspapers made an outcry, . . . and some began to fear that they had not done enough to meet the reform tendency of the Democracy." On July 20, J. S. C. Knowlton of Worcester revived the whole subject with a resolution for a limited appointment, similar to that of Henry Wilson. In vain were all the Conservative orators thrown into the breach; the most they could obtain were a few minor changes. Chapter VIII of the Constitution of 1853, on the Judiciary, provided a ten-year term for judges, appointed by Governor and Council, and eligible for reappointment; a seven-year term for justices of the peace; and election of trial justices and judges of police courts by the towns and cities. "So, the whole judiciary effort," wrote Dana, "has ended in changing the life tenure to ten years; a change that gives but little gain to popular power, while it works one certain evil, it subjects each judge to the temptation or the suspicion of commending himself to the executive during the last year or two of his term."<sup>1</sup>

A separate chapter (IX) on the qualifications of voters and elections was one great improvement in the Constitution of 1853. Almost the whole of it was new. Article I adopted manhood suffrage with six months' residence qualification. But this was not allowed to pass without a plea for woman suffrage. Two petitions, headed by Francis Jackson and Harriet L. Randall, for striking the word "male" out of the Constitution, were introduced early in the session. On July 12 William B. Greene, the transcendentalist minister of Brookfield, rose to defend the principle. He maintained that women had not only a natural right to vote but a constitutional right, under the plain meaning of the Preamble and Article VII of the Declaration of Rights. "I know very well what course the Convention will take in this matter, and I know very well what answers I will receive, if I receive any. Sir, I call for arguments, not phrases. I profess, sir, to stand on democratic ground and would like to hear any Democrat rise up here and say that he believes the doctrine set forth in the Massachusetts Bill of Rights, and at the same time say that he will deny to women the exercise of their right to vote." Edward L. Keyes, who followed him in debate, ad-

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<sup>1</sup> Adams' *Dana*, I, 240-242.

mitted that women had a right to vote, but insisted that it would be a mistake for them to "enter into conflict with men, in political and governmental affairs . . . that softness and delicacy of character, and those bland enchantments which bind the world in silken chains, would be lost, and lost forever. . . ." Daniel S. Whitney of Boylston said a word on the women's side, and the question was duly shelved.<sup>1</sup>

Article II of Chapter IX provided for the secret ballot by requiring that all ballots (which until 1888 were printed by the various parties, and distributed before the election) be deposited in sealed envelopes furnished by the Commonwealth. A Coalition Legislature had adopted this system a year or two before in order to protect employees from compulsion; the Whig Legislature of 1853 repealed it, on the ground that it insulted the manliness and independence of the laboring men. The same line-up occurred in the Convention. The Rev. Samuel K. Lothrop of Boston asked the Convention to trust the people. Shubael P. Adams said that to his certain knowledge there was not a single moment during the presidential election of 1848 when the ballot boxes of Lowell were not closely watched by "overseers of a certain political stripe" in order to scrutinize employees' ballots. He had seen men forced to change their vote for fear of discharge. All was changed when the sealed ballot law went into effect, "for the votes all looked alike."

Article III provided, for the first time in the history of the Commonwealth, for the registration of voters.

Article VII proposed to hold State and national elections on the same date, instead of a week apart, as had been required by Amendment X.

Articles V-IX were called by the opponents of this Constitution the "plurality patch-up." For many years the constitutional requirements for a majority instead of a plurality to elect all officers had been a nuisance. So long as there were only two parties, a majority was generally secured for one candidate; but powerful third parties had been common since 1830. The choice of Governor (under Chapter I, Section I, Article III) had frequently been thrust on the Legislature. Repeated balloting, causing unnecessary delay and expense, had often been neces-

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<sup>1</sup> *Debates*, II, 726-738.

sary to secure a majority for other elective officials. In one case twelve ballotings took place before a candidate could be elected; and one Congressional district, for a failure to give one of these candidates a majority, remained unrepresented for the entire Congress. The plurality system for all elections had long been agitated; its necessity had been emphasized as one of the main reasons for holding the Convention, and the popular mandate thereon was clearer than on any subject save representation. The committee on elections, presided over by Henry W. Bishop of Lenox, reported in favor of the plurality system. The conservative side pressed for it, but most of the "reformers" developed a sudden tenderness for the old majority system, from which the Coalition party had greatly profited in the past. The report was recommitted to Benjamin F. Butler *et al.*, who reported the "plurality patch-up" of Chapter IX.<sup>1</sup> William Schouler attempted to restore it to the form of the original report (plurality for all elections), but his resolve was rejected by a vote of 159 to 160, the casting vote of President Banks deciding in the negative.<sup>2</sup> Chapter IX adopted the plurality system for Councillors, Senators and county officials, but maintained the majority rule for all others, "until otherwise provided by law." "You talk to me about principle", said Josiah G. Abbott, "when you have given up all principle, and all that you have got in exchange, is something to go into the legislature and trade upon. . . . That is so apparent, that it sticks out in every direction; the lion's skin is not a quarter large enough to cover something that I will not give any name to."<sup>3</sup>

Chapter X included everything in the Constitution on oaths, disqualifications for office, writs and commissions, only a few minor changes being adopted. Chapter XI was devoted to the militia. It was a serious attempt to strengthen and popularize that force, then in a most depressed condition, by having every officer, from major-generals down, elected by the members of the grade below. Article II provided that "All citizens of this Commonwealth liable for military service . . . shall be enrolled in the militia, and held to perform such military duty as by law may be required."

Chapter XII corresponded to Chapter V of the Constitution

<sup>1</sup> *Debates*, III, 86.

<sup>2</sup> *Journal*, 240; *Debates*, III, 134.

<sup>3</sup> *Debates*, III, 153.

of 1780. The "University at Cambridge" had its usual overhauling, and a clause was introduced asserting the right of the Legislature to alter the powers vested in that corporation, "provided, the obligation of contract shall not be impaired." Article IV protected the school fund against misappropriation.

Chapter XIV provided that a popular vote on the question of calling a new constitutional convention may be held by action of the Legislature, on the demand of towns and cities containing one-third of the votes, and, in any case, every twenty years. Article III repeated Amendment IX, and Article IV provided for the special constitutional referendum on the district system of 1856.

This was the last chapter of the Constitution of 1853. But many contentious points were embodied in the seven additional propositions. No. 2 related to the writ of habeas corpus. No. 3 provided that the jury in criminal cases should have the right to determine the law as well as the facts. No. 5 forbade imprisonment for debt (which had already been abolished by law). No. 6, forbidding appropriations for sectarian schools, was subsequently adopted as Amendment XVIII.

This anti-sectarian amendment was proposed, so George W. Blagden explained for the committee, in order to put a stop to the pressure for public funds from certain religious sects for the support of their denominational schools. Francis W. Bird proposed that the colleges be included, and gave an account of the collegiate drive upon the State treasury a few years before. Charles W. Upham maintained that the amendment might cause considerable trouble, since the common schools of the State themselves had a sectarian character.<sup>1</sup> The most interesting debate came on a motion for reconsideration, after it had been formally adopted. Nathaniel Wood of Fitchburg and Benjamin F. Butler argued that the amendment was unfair to the Roman Catholics, who could not conscientiously send their children to public schools as then conducted. Francis W. Crowninshield of Boston said: "I can assure these gentlemen, their Catholic friends are not to be caught by such chaff as this. . . . Gentlemen have sat in their seats while this provision has passed through all of its stages to its final passage, and no voice

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<sup>1</sup> *Debates*, II, 543-550.

was raised against it. And now, on the very last day . . . but one of the sessions, lo! a violent indignation is gotten up against the resolution, and it is insisted that it must be expunged." The motion to reconsider failed, 87 to 183.<sup>1</sup>

Propositions Nos. 7 and 8 were a laudable attempt to further the movement for general incorporation laws, in which Massachusetts was the pioneer State.

(d) *Adoption by the Convention, Rejection by the People.*

Monday, August 1, was the last day of the Convention. At 10.15 A.M. the printed draft of the new Constitution and the changes submitted separately was circulated among the members, and the final debate began. Boutwell, in spite of his weariness, led the defence of the new Constitution, which was subjected to severe criticism from Ex-Governor Morton, Otis P. Lord, and George S. Hillard. Boutwell was called upon to explain upon what principle some changes were incorporated in the Constitution, and others submitted as separate propositions. He replied that the committee desired to give the people "an intelligible and systematic organic law," which could not be had by allowing them to express a distinct opinion upon every separate change. It therefore placed in the new Constitution "so much and many of the resolutions adopted by this Convention as were necessary to perfect and make harmonious the government which we propose to establish;" the seven separate propositions were "not necessary to the working of the government," and of such nature that they may be rejected or adopted without disturbing the harmony of either the old or the new Constitution.<sup>2</sup>

This statement, inevitably, opened the door for a flood of such questions as "Why did you leave out this and put in that?" The real principle of choice, of course, was individual preference. That none of the thirty-five changes were strictly necessary to the working of the government, their total rejection proved. The committee had simply selected those it thought most desirable to incorporate into the new Constitution and discarded the rest; though necessarily, in many cases, a

<sup>1</sup> *Debates*, III, 613-626.

<sup>2</sup> *Debates*, III, 655.

group of changes could not be separated. There was no logical reason, for instance, for incorporating the secret ballot and discarding imprisonment for debt. There followed a series of amendments offered by Conservatives with a view to dismantling the new Constitution. Otis P. Lord moved to separate the new system of representation, taking the view that the new Constitution had been built up around this nucleus in order to sweeten it, that the majority dared not to trust the people "to accept it on its own merits." Hillard compared the majority to the Arab who proposed to sell his camel for five ducats and his cat for a hundred, provided the same purchaser takes both. But the motion was rejected, 91 to 205.<sup>1</sup>

Similarly, Rufus Choate proposed to remove from the Constitution and submit as four separate propositions the changes in judicial tenure. But Dana and Boutwell showed that this might leave the Commonwealth without any judiciary. In Chapter XIII a few minor changes in phraseology were agreed to.

After the fourteenth and last chapter had been read, Ex-Governor Morton delivered a speech which turned out to be prophetic: —

I fear, Sir, that we have somewhat forgotten the mission upon which we were sent to this house; that we have been acting together in the exercise of unrestrained power, till we have forgotten the source of our authority, and have not sufficiently borne in mind the wishes and rights of those who stand behind us, to act upon the propositions which we may submit to them. I fear that, while we profess democracy, and a love for the people, we have acted on an opposite principle. Distrust of the people is stamped on almost every act. Look what was said with regard to the State credit. It was avowed, by some of the majority — I do not remember whom — that "the" people could not be trusted with power in regard to this matter. And what was the result? They were divested of the power to decide where the credit of the State might be loaned or given away. What! Not trust the people with the management of their own money, and their own credit! And, Sir, it has been just so with regard to every other act. No principle, however sound and just, is fully carried out. So it was with regard to the secret ballot. . . . Just so, likewise, was it in regard to the plurality question. You would not let the people decide the question, for or against it, as they might choose. And in regard to the subject of representation, the most important subject which

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<sup>1</sup> *Debates*, III, 676-679.

was submitted to us, we have not only disregarded the well-known wishes of the people for the reduction of the House, but refused to allow them to decide between the town and district system. . . .

The Committee . . . have told us that their main desire, in putting the amendments together in this shape, was to preserve the symmetry and harmony of the instrument, and the beauty and orderly arrangement of the pamphlet to be published. I am afraid that gentlemen deceive themselves as to the real cause which has induced them to adopt this course. I am bound to believe that the gentlemen are sincere in their professions, and honestly believe that they are governed by the causes which they assign. But if they will look at the matter a little more disinterestedly, they will perceive how very difficult it will be to make outsiders believe it, and to prevent them from judging that, in order to carry some favorite but objectionable scheme, all the popular measures have been connected with it, to induce the people to vote for it, and thus to give it the force of a popular adoption, when it may be that a majority of them are opposed to it. They may possibly adopt the language of one of the Committee, on another occasion, and say: "The lion's skin is not big enough — not half big enough, to conceal that other animal, which I will not name. His ears are in full view."<sup>1</sup>

Late in the evening of August 1 an address to the people, which Boutwell had somehow found time to draft during the day, was adopted, as well as resolves prescribing a form of ballot, etc., for the popular referendum; a committee was appointed to meet in December and count the votes; and at one in the morning, following a brief valedictory by President Banks, the Convention adjourned without day.

The Constitution of 1853 and the seven other constitutional propositions were voted upon at the regular State election on November 11, 1853. They were the subject of the liveliest constitutional canvass ever held in the history of Massachusetts. Most of the leading members of the Convention made public speeches that were widely circulated in newspapers and pamphlets, and the press devoted considerable space to the controversy. The entire weight of the Whig party was thrown against the Constitution, and they were reinforced by some notable defections from the ranks of the Free-Soilers and Democrats, — notably Ex-Governor Morton, John G. Palfrey, and Charles Francis Adams, first of that name. Hillard continued his opposition under the guise of "Silas Standfast" in the *Boston Atlas*;

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<sup>1</sup> *Debates*, III, 703-704.



George Ticknor Curtis, as "Phocion," devoted his literary ability to the same end in the columns of the *Advertiser*. On the other side, Dana, Boutwell, Hallett, and Wilson defended their work.

Everything was rejected. The vote on Proposition No. 1, the Constitution of 1853, was 63,222 to 68,150. All the other propositions except No. 3 secured a slightly higher affirmative vote, but the result was the same. No. 6, on sectarian schools, was lost by only 401 votes. Various interpretations are given by contemporaries. Some assert that the system of representation was the principal factor; others, the alteration of judicial tenure. It is also pertinent to indicate that the vote closely followed party lines, that the power of the Coalition was waning, that the national administration ordered Democrats to break off their unholy alliance with Free-Soil "abolitionists," and that the Whig party won the State election on the same date. "Warrington" (William S. Robinson) states in his "Pen-Portraits" that Abbott Lawrence employed forty-one orators to perambulate the State in the interest of rejection, but humorously gives twenty-two other reasons for the result. Boutwell, Butler, and Dana ascribe the defeat to the "Irish vote," though not for the same reason. The *Boston Pilot* did oppose the new Constitution vigorously, giving much the same reasons as the Whig press, but an analysis of the Boston vote shows that the wards where most of the Irish-born population then lived did not poll so heavy a negative vote as the fashionable residential districts. The resentment of all city dwellers at the unjust scheme of town representation was undoubtedly a leading cause. Analysis of the vote on Proposition No. 1 by counties shows that every tide-water county was opposed, and every inland county but Hampshire in favor. It was country against city, the old order against the new, and the new won by preserving the old Constitution.

##### 5. PERIOD 1854-1915.

If inclined to be sarcastic one might say that the Convention of 1853 labored seventy-two days, and brought forth — three fat volumes of debates. Yet in spite of the immediate rejection of all its proposed changes, the more worthy and popular ones

have since become incorporated in the Constitution by single amendments, and as an educational force in constitutional matters the Convention justified its existence.

The Whig Legislatures of 1853 and 1854 did the Convention the compliment of adopting several of its propositions in five amendments, which were accepted by the people by a large majority at a special election on May 23, 1855. Article XIV adopted the plurality principle for all elections. Article XV shifted the State election a week ahead, to the national date. Article XVI provided for popular election of eight Councillors in single districts of equal population, and for a speedier organization of the administration at the opening of the political year, — a reform that had been urged in the Convention but not adopted. Article XVII lengthened the ballot with four minor executive officers. Article XVIII was the Convention's Proposition No. 6, forbidding the appropriation of taxes for private or sectarian schools. Article XIX permitted the Legislature to provide by law for the popular election of county officials; and the Convention's suggestion of a three-year term is now the rule.

The three amendments ratified on May 1, 1857, belong to the same group. Article XX prescribed a literary qualification for the franchise. Article XXI was one of the greatest constitutional reforms ever adopted in this State. It solved the vexatious question of representation by providing for a House of 240 members, apportioned decennially according to the number of legal voters, in representative districts electing not more than three members each. It also increased the quorum to 100 members, which in 1891 was still further increased to a majority for each branch. Article XXII extended the district system to the Senate.

Other proposed reforms in the Constitution of 1853, such as the secret ballot and registration of voters, were adopted by legislative enactment.

This group of eight amendments is what Massachusetts chose from the wave of democratic constitutional reform that swept through the United States during the middle of the nineteenth century. Popular election of minor officials and equality in representation were typical manifestations of this movement.

But many things that crept into the constitutions of her sister States Massachusetts did not need or care to adopt. Among these may be mentioned abolition of judicial tenure during good behavior, and those numerous limitations on the power of legislatures that spin out other constitutions to interminable length. The Commonwealth has been reluctant to introduce reforms through the fundamental law that may equally well be secured through the statutory law. Her constitutional development has been conservative, in the best sense of that word.

Fifteen constitutional amendments were adopted in the half century between 1859 and 1909. Some removed disqualifications for the franchise, in favor of Civil War veterans and others; several cleared up doubtful or disputed points in the Constitution as to the filling of vacancies, place of voting, etc.; a few were minor reforms; none were fundamental. Article XXXIX permits excess condemnation of land in connection with the laying out, widening, or relocating of highways. Article XL disfranchises persons guilty of corrupt practices in elections. The use of the taxing power for the encouragement of the afforestation of wild lands is authorized by Article XLI, while the Legislature is empowered by Article XLII to refer any of its acts or resolves to a popular vote. Article XLIII makes it possible for the Commonwealth to take and hold land for the purpose of relieving congestion of population. The last amendment, Article XLIV, adopted in 1915, radically modified the tax system of the State by authorizing the substitution of an income tax for the general property tax which had heretofore been the chief reliance for revenue.

VII.  
TABULAR SUMMARY OF THE CONSTITUTIONAL CONVENTIONS OF MASSACHUSETTS.

	Convention of 1777-78 (House and Council).	Convention of 1779-80.	Convention of 1820-21.	Convention of 1853.	Convention of 1917.
Date of enabling act, . . . . .	May 5, 1777.	February 20, 1779.	June 10, 1820.	May 7, 1852.	April 8, 1916.
Popular vote thereunder: —					
Date, . . . . .	May, 1777.	April and May, 1779.	August 21, 1820.	November 8, 1852.	November 7, 1916.
Yeas, . . . . .	No record.	6,612.	11,756.	66,416.	217,293.
Nays, . . . . .	No record.	2,639.	6,593.	59,112.	120,979.
Date of election of delegates, . . . . .	May, 1777.	June, October, 1779; May, 1780.	October 16, 1820.	March 7, 1853.	May 1, 1917.
Dates of sessions, . . . . .	At intervals, June 15, 1777, to February 25, 1778.	September 1-7, 1779; October 28-November 11, 1779; January 5 to March 2, 1780; June 7-16, 1780.	November 15, 1820, to January 9, 1821.	May 4 to August 1, 1853.	June 6, 1917, to —
Place of sessions, . . . . .	Representatives' Chamber, Old State House.	First Church, Cambridge; Representatives' Chamber, Old State House; Brattle Street Church, Boston.	Representatives' Chamber, State House.	Representatives' Chamber, State House.	Representatives' Chamber, State House.
Length of sessions, . . . . .	36 days.	64 days.	47 days.	72 days.	
Number of delegates, . . . . .	302.	312.	485.	419.	320.
Quorum, . . . . .	No record.	No rule.	100.	100.	161.
Pay of delegates, . . . . .	Nothing additional.	Optional with towns.	\$3 per diem.	\$3 per diem.	Not more than \$750.
President, . . . . .	Jeremiah Powell.	James Bowdoin.	Isaac Parker.	Nathaniel P. Banks, Jr.	John L. Bates.
Secretary, . . . . .	Samuel Freeman.	Samuel Barrett.	Benjamin Pollard.	W. S. and J. T. Robinson.	James W. Kimball.
Date of popular vote on revision, . . . . .	June, 1778.	March to June, 1780.	April 9, 1821.	November 14, 1853.	—
Popular vote: —					
Yeas, . . . . .	2,083.	—	22,726. <sup>1</sup>	63,222. <sup>2</sup>	—
Nays, . . . . .	9,972.	—	6,444.	68,150.	—

<sup>1</sup> Vote on Proposition No. 8, the highest total on any accepted.

<sup>2</sup> Vote on Proposition No. 1, the new Constitution.

## VIII.

## BIBLIOGRAPHY.

## 1. GENERAL.

There is great need of a comprehensive constitutional history of Massachusetts that will trace the formation of our fundamental law from the beginning, describe the political, social, and economic conditions back of our constitutional changes, and trace the modifications that have been brought about through decisions and opinions of the courts on constitutional subjects. The only book we have on the subject at present is —

Louis A. Frothingham, *A Brief History of the Constitution and Government of Massachusetts*. Cambridge, 1916, pp. 140.

For a comparison of the Constitution and Government of Massachusetts with those of other States, see

William C. Webster, "Comparative Study of the State Constitutions of the American Revolution," *Annals of American Academy of Political and Social Science*, IX, 380-420 (May, 1897).

William C. Morey, "The First State Constitutions," *Annals of American Academy of Political and Social Science*, IV, 201, 232 (September, 1893).

Arthur N. Holcombe, *State Government in the United States*. New York, 1916, pp. 498.

There are three published addresses of some historical value:

James Savage, *Constitution of Massachusetts*. Address delivered before the Massachusetts Lyceum, 1832, pp. 12.

Alexander H. Bullock, *The Centennial of the Massachusetts Constitution*. Worcester, 1881, pp. 56. (Reprinted from the *Proceedings of the American Antiquarian Society*, N. S., I.)

Arthur Lord, "The Massachusetts Constitution and the Constitutional Conventions." An address before the Massachusetts Bar Association, 1916. (*Massachusetts Law Quarterly*, II, Special Number, October, 1916, pp. 32.)

The popular vote on Amendments I to XLIV to the Constitution will be found in the above pamphlet, page 31. The vote on Amendments proposed but rejected is given in *Old South Leaflet*, No. 209. The vote on all questions of calling a constitutional convention from 1779 to 1916, compared with the vote

for Governor at the nearest election, is given in the *Proceedings of the Massachusetts Historical Society* for April, 1917.

No one of the existing histories of Massachusetts or New England pays much attention to constitutional history. Detailed information on constitutional development must be gleaned from a variety of sources and secondary authorities.

*The Old South Leaflets* (published by the Old South Association, at the Old South Meeting House, Boston) contain several useful documents in constitutional history: —

No. 7. The Colony Charter of 1629.

No. 8. The Body of Liberties, 1641.

No. 209. The Rejected Constitution of 1778, with a List of Rejected Amendments to the Constitution of 1780, and Useful Notes.

## 2. COLONY AND PROVINCE.

The colonial and province charters are printed in *The Charters and General Laws of . . . Massachusetts Bay* (binders' title, *Massachusetts Antient Charters and Laws*). Boston, 1814.

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The Province Charter of 1691 and Explanatory Charter of 1725 are accurately printed in the *Publications of the Colonial Society of Massachusetts*, II.

There is no comprehensive work on constitutional development during the provincial period, but the following are useful monographs: —

Evarts B. Greene, *The Provincial Governor in the English Colonies of North America* (Harvard Historical Studies, VII), and *Provincial America, 1690-1740* (The American Nation, a History, VI).

Everett Kimball, *The Public Life of Joseph Dudley* (Harvard Historical Studies, XV).

H. R. Spencer, *Constitutional Conflicts in Provincial Massachusetts, to 1740*. (Columbus, 1905.)

O. M. Dickerson, *American Colonial Government, 1696-1765*. (Cleveland, 1912.) Describes the relations between the Province and the English government.

The constitutional conflict that preceded the American Revolution is described from the patriot viewpoint in John G. Palfrey, *History of New England*, V (Boston, 1890), and from the Tory viewpoint in Governor Thomas Hutchinson, *History of the Province of Massachusetts Bay*, III (London, 1828).

### 3. REVOLUTIONARY PERIOD.

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A detailed account of the way the Constitutional Conventions of 1777-1778 and 1779-1780 were summoned will be found in the *Proceedings of the Massachusetts Historical Society* for April, 1917. The Manuscript Journal of the Convention of 1777-1778 and a copy of the printed report of its committee are in the State Archives, Vol. 156. The Constitution of 1778 is printed in a contemporary pamphlet, in the appendix to Alden Bradford, *History of Massachusetts*; in the printed *Journal of the Convention of 1779-1780*, and in *Old South Leaflet*, No. 209.

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### 4. THE CONVENTION OF 1779-1780.

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*John Adams* (Boston, 1851), IV, 213-267. His other writings on government are printed in the same volume.

Emory Washburn, "Origin and Sources of the Bill of Rights in the Constitution of Massachusetts," *Proceedings of the Massachusetts Historical Society*, VIII, 294-313 (June, 1865).

Charles Deane, "Judge Lowell and the Massachusetts Declaration of Rights," *Proceedings of the Massachusetts Historical Society*, XIII, 299-304 (April, 1874).

S. E. Morison, "The Struggle over the Adoption of the Constitution of Massachusetts," *Proceedings of the Massachusetts Historical Society*, May, 1917.

##### 5. THE CONVENTION OF 1820.

The debates at this Convention were reported in the *Boston Daily Advertiser*, and reprinted as *Journal of Debates and Proceedings in the Convention of Delegates, . . . holden at Boston*, November 15, 1820. . . . Boston, 1821, pp. 292. A new edition, (pp. 677) with much better type and paper, was brought out in 1853. The appendix contains the popular vote by counties on the propositions submitted by this Convention. Neither edition contains the official journal, which has never been printed. The original manuscript, together with such papers of the Convention as have been preserved, may be found in the State Archives, Miscellaneous Files, Box 19.

A few committee reports were printed separately, notably Daniel Webster's *Report upon the Constitutional Rights and Privileges of Harvard College* (pp. 16), January 4, 1821. They will also be found in both editions of the *Journal of Debates and Proceedings*. The results of the Convention were published by it in a pamphlet entitled *Amendments of the Constitution of Massachusetts, proposed by the Convention of . . . eighteen hundred and twenty; with their Address to the People of this Commonwealth*. Boston, 1821, pp. 32. There is also a separate edition of the *Rules and Orders*.



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*A Few Facts And Reasons Why A Convention Should Be Called to Revise the Constitution.* Published under the direction of the Democratic State Convention. Boston, 1852, pp. 24.

(b) *Official Documents.*

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*Official Report of the Debates and Proceedings in the State Convention Assembled May 4th, 1853, to Revise and Amend the Constitution of the Commonwealth of Massachusetts,* Boston, 1853. Three volumes, pp. 994, 840, 797. The Appendix to Vol. III contains the act of May 7, 1852, the vote by towns and cities on the question of calling the Convention, and on the revised Constitution and constitutional propositions submitted by the Convention, and the test of the latter by towns and cities.

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## THE CONSTITUTION OF THE UNITED STATES.<sup>1</sup>

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<sup>1</sup> WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### ARTICLE I.

<sup>2</sup> SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

<sup>3</sup> SECTION. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

<sup>4</sup> No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

<sup>5</sup> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, [which shall be

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<sup>1</sup> The text of the Constitution here given is that printed in Farrand, *The Records of the Federal Convention of 1787*, II, 651, which is intended to be an exact reprint of the original. The text of the first fifteen Amendments is taken from *American History Leaflets*, No. 8, edited by A. B. Hart and E. Channing, and based upon copies made from the originals by the editors. The text of the Sixteenth and Seventeenth Amendments is taken from the proclamations of the Secretary of State declaring them to have been duly adopted. For convenience of reference the present editor has numbered the paragraphs continuously.

NOTE.—The Constitution of the United States as here arranged and the accompanying notes are reprinted by permission of the publisher from Evans, *Leading Cases on American Constitutional Law*, Chicago: Callaghan and Company, 1916.

determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]]<sup>1</sup> The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

<sup>6</sup> When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

<sup>7</sup> The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

<sup>8</sup> SECTION 3. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]]<sup>2</sup> for six Years; and each Senator shall have one Vote.

<sup>9</sup> Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]]<sup>3</sup>

<sup>10</sup> No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the

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<sup>1</sup> Superseded by the Fourteenth Amendment.

<sup>2</sup> Superseded by the Seventeenth Amendment.

<sup>3</sup> Modified by the Seventeenth Amendment.

United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

<sup>11</sup> The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

<sup>12</sup> The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

<sup>13</sup> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

<sup>14</sup> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

<sup>15</sup> SECTION. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

<sup>16</sup> The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

<sup>17</sup> SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

<sup>18</sup> Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

<sup>19</sup> Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

<sup>20</sup> Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

<sup>21</sup> SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

<sup>22</sup> No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

<sup>23</sup> SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

<sup>24</sup> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the

Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

<sup>25</sup> Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

<sup>26</sup> SECTION. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and Provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

<sup>27</sup> To borrow Money on the credit of the United States;

<sup>28</sup> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

<sup>29</sup> To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

<sup>30</sup> To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

<sup>31</sup> To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

<sup>32</sup> To establish Post Offices and post Roads;

<sup>33</sup> To promote the Progress of Science and useful Arts, by securing for limited Time to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

<sup>34</sup> To constitute Tribunals inferior to the supreme Court;

<sup>35</sup> To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

<sup>36</sup> To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

<sup>37</sup> To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

<sup>38</sup> To provide and maintain a Navy;

<sup>39</sup> To make Rules for the Government and Regulation of the land and naval Forces;

<sup>40</sup> To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

<sup>41</sup> To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

<sup>42</sup> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And

<sup>43</sup> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

<sup>44</sup> SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

<sup>45</sup> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

<sup>46</sup> No Bill of Attainder or ex post facto Law shall be passed.

<sup>47</sup> No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.<sup>1</sup>

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<sup>1</sup> Modified by the Sixteenth Amendment.



<sup>48</sup> No Tax or Duty shall be laid on Articles exported from any State.

<sup>49</sup> No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

<sup>50</sup> No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

<sup>51</sup> No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

<sup>52</sup> SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

<sup>53</sup> No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

<sup>54</sup> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ARTICLE. II.

<sup>55</sup> SECTION. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the

Vice President, chosen for the same Term, be elected, as follows

<sup>56</sup> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

<sup>57</sup> [The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]<sup>1</sup>

<sup>58</sup> The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

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<sup>1</sup> Superseded by the Twelfth Amendment.

<sup>59</sup> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

<sup>60</sup> In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

<sup>61</sup> The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

<sup>62</sup> Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:— "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

<sup>63</sup> SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

<sup>64</sup> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States,

whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

<sup>65</sup> The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

<sup>66</sup> SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

<sup>67</sup> SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE. III.

<sup>68</sup> SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

<sup>69</sup> SECTION. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;— to all Cases affecting Ambassadors, other public Ministers and Consuls;— to all Cases of admiralty and maritime Jurisdiction;— to Controversies to which the United States shall be a Party;— to Controversies between two or more States;— between a State and

Citizens of another State;<sup>1</sup> — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

<sup>70</sup> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

<sup>71</sup> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

<sup>72</sup> SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

<sup>73</sup> The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

#### ARTICLE. IV.

<sup>74</sup> SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

<sup>75</sup> SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

<sup>76</sup> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of

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<sup>1</sup> Modified by the Eleventh Amendment.

the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

<sup>77</sup> No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

<sup>78</sup> SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

<sup>79</sup> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

<sup>80</sup> SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## ARTICLE. V.

<sup>81</sup> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

## ARTICLE. VI.

<sup>82</sup> All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

<sup>83</sup> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

<sup>84</sup> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## ARTICLE. VII.

<sup>85</sup> The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

<sup>86</sup> DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

Go. WASHINGTON — *Presidt.*  
and deputy from Virginia.

Attest WILLIAM JACKSON *Secretary.*

New Hampshire ..	{ John Langdon Nicholas Gilman }
Massachusetts....	{ Nathaniel Gorham Rufus King }
Connecticut .....	{ Wm: Saml. Johnson Roger Sherman }
New York.....	Alexander Hamilton
New Jersey.....	{ Wil: Livingston David Brearley. Wm. Paterson. Jona: Dayton }
Pennsylvania.....	{ B Franklin Thomas Mifflin Robt Morris Geo. Clymer Thos. Fitzsimons Jared Ingersoll James Wilson Gouv Morris }
Delaware .....	{ Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom }
Maryland.....	{ James McHenry Dan of St Thos. Jenifer Danl. Carroll. }
Virginia.....	{ John Blair — James Madison Jr. }
North Carolina ...	{ Wm. Blount Richd. Dobbs Spaight. Hu Williamson }



South Carolina . . .	{ J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler.
Georgia . . . . .	{ William Few Abr Baldwin

NOTE. — On September 28, 1787, Congress directed that the Constitution, "with the resolutions and letter accompanying the same, be transmitted to the several Legislatures in order to be submitted to a Convention of Delegates chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case." *Journal of Congress*, XII, 166. When the new government went into operation, the Constitution had been ratified by only eleven States, but ultimately it was ratified by all of them in the following order: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

ARTICLES in addition to and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

#### [ARTICLE I.]

<sup>87</sup> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### [ARTICLE II.]

<sup>88</sup> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

#### [ARTICLE III.]

<sup>89</sup> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

## [ARTICLE IV.]

<sup>90</sup> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## [ARTICLE V.]

<sup>91</sup> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## [ARTICLE VI.]

<sup>92</sup> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## [ARTICLE VII.]

<sup>93</sup> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## [ARTICLE VIII.]

<sup>94</sup> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## [ARTICLE IX.]

<sup>95</sup> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## [ARTICLE X.]

<sup>96</sup> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.<sup>1</sup>

## [ARTICLE XI.]

<sup>97</sup> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.<sup>2</sup>

## [ARTICLE XII.]

<sup>98</sup> The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the

<sup>1</sup> The first ten Amendments were proposed by Congress September 25, 1789, and were ratified by the necessary number of States December 15, 1791.

<sup>2</sup> The Eleventh Amendment was proposed by Congress March 4, 1794, and was ratified by the necessary number of States February 7, 1795. In a message to Congress on January 8, 1798, President Adams announced that the Amendment might be regarded as a part of the Constitution.

greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.<sup>1</sup>

#### ARTICLE XIII.

<sup>99</sup> SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. SECTION 2. Congress shall have power to enforce this article by appropriate legislation.<sup>2</sup>

#### ARTICLE XIV.

<sup>100</sup> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State

<sup>1</sup> The Twelfth Amendment was proposed by Congress December 8, 1803, and declared in force by the Secretary of State September 25, 1804.

<sup>2</sup> The Thirteenth Amendment was proposed by Congress January 31, 1865, and declared in force by the Secretary of State December 18, 1865.

shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<sup>101</sup> SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

<sup>102</sup> SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

<sup>103</sup> SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

<sup>104</sup> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.<sup>1</sup>

#### ARTICLE XV.

<sup>105</sup> SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. —

<sup>106</sup> SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.<sup>2</sup> —

#### ARTICLE XVI.

<sup>107</sup> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.<sup>3</sup>

#### [ARTICLE XVII.]

<sup>108</sup> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

<sup>109</sup> When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

<sup>110</sup> This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.<sup>4</sup>

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<sup>1</sup> The Fourteenth Amendment was proposed by Congress June 13, 1866, and was declared in force by the Secretary of State July 28, 1868.

<sup>2</sup> The Fifteenth Amendment was proposed by Congress February 26, 1869, and was declared in force by the Secretary of State, March 30, 1870.

<sup>3</sup> The Sixteenth Amendment was proposed by Congress July 12, 1909, and was declared in force by the Secretary of State February 25, 1913.

<sup>4</sup> The Seventeenth Amendment was proposed by Congress May 13, 1912, and was declared in force by the Secretary of State May 31, 1913.

## THE CONSTITUTION OF MASSACHUSETTS, ANNOTATED.

### PRINCIPLES OF CONSTITUTIONAL INTERPRETATION.

The general principles of interpreting and applying the Constitution have been laid down as follows:—

“This declaration of rights, and frame of government, composing together the constitution, was not first prepared and drawn up by and for a people who were then, for the first time, establishing political and civil institutions, for their security and government; it was rather a slight remodelling of a social system, by a people who had long enjoyed the protection of law, and the security of social order, under a government, nearly as free, and practically nearly as popular, as the lot of humanity would admit. The constitution itself recognizes this condition of law and social order, and provides that all laws, before adopted, used and approved, in the Colony, Province or State, should remain and continue in force, such parts only excepted, as were repugnant to the rights and liberties contained in the constitution itself. Each particular clause and provision of the constitution therefore, and especially in the declaration of rights, is to be expounded under the broad light thrown upon it by this constant reference, tacit or express, to established laws and institutions, and to the principles and maxims of civil liberty.” *Commonwealth v. Blackington*, 24 Pick. 352, 356.

“In construing this constitution, it must never be forgotten, that it was not intended to contain a detailed system of practical rules, for the regulation of the government or people in after times; but that it was rather intended, after an organization of the government, and distributing the executive, legislative and judicial powers, amongst its several departments, to declare a few broad, general, fundamental principles, for their guidance and general direction.” *Commonwealth v. Blackington*, 24 Pick. 352, 356.

“The constitution must be interpreted as any other instrument with reference to the circumstances under which it was framed and adopted. It is not necessary to show that the men who framed it or who adopted it had in mind everything which by construction may be found in it, but

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**NOTE.**— In this digest of decisions interpreting the Constitution no attempt has been made to cite all the cases, particularly where they are very numerous and consist in large part of the affirmation of earlier decisions. It has been thought sufficient to indicate merely those cases which are necessary to show what meaning has been given to the language of the Constitution by the Supreme Judicial Court. No citations are given on obsolete portions of the Constitution.

some regard must be had to the modes of thought and action on political subjects then prevailing, to the discussions upon the nature of the government to be established, to the meaning of the language used as then understood, and to the grounds on which the adoption or rejection of the Constitution was advocated before the people." Opinion of Justices, 155 Mass. 598, 602.

The statutes passed immediately after the adoption of the Constitution afford a valuable contemporaneous construction of its provisions. *Commonwealth v. Blackington*, 24 Pick. 352, 355.

Long acquiescence constitutes a practical construction of great weight, although perhaps not conclusive. *Pierce v. Drew*, 136 Mass. 75, 79; *Commonwealth v. Lockwood*, 109 Mass. 323; *Costley v. Commonwealth*, 118 Mass. 1, 36; *Packard v. Richardson*, 17 Mass. 122; *Commonwealth v. Parker*, 19 Mass. 550; *Holmes v. Hunt*, 122 Mass. 505; Opinion of Justices, 126 Mass. 557; *Cobb v. Kingman*, 15 Mass. 197; *Commonwealth v. Parker*, 2 Pick. 549, 556; Answer of Justices, 214 Mass. 602, 606.

In passing a statute, the Legislature thereby makes a determination that the statute is constitutional. This is an exercise of discretion which will not be overruled by the courts unless clearly wrong. In other words, there exists the strongest possible presumption that all statutes are constitutional. *Kendall v. Kingston*, 5 Mass. 524, 534; *Adams v. Howe*, 14 Mass. 340, 345; *Commonwealth v. Kneeland* (dissenting opinion), 20 Pick. 206, 227; *Talbot v. Hudson*, 16 Gray, 417, 422, 429; *Northampton v. County*, 145 Mass. 108, 109; *Charles River Bridge v. Warren Bridge*, 7 Pick. 344, 474; *Bank v. Apthorpe*, 12 Mass. 252, 253; *Commonwealth v. Bank*, 5 Allen, 428; *Norwich v. Hampshire*, 13 Pick. 60.

But this presumption of constitutionality does not extend to the action of State boards. *Wyeth v. Board of Health*, 200 Mass. 474, 480.

If some divisible part of a statute is held unconstitutional, this will not invalidate the rest, provided the court believes that the Legislature would have passed the residue independently. *Fisher v. McGirr*, 1 Gray, 1, 21; *Commonwealth v. Kneeland* (dissenting opinion), 20 Pick. 206, 227; *Commonwealth v. Hitchings*, 5 Gray, 482; *Warren v. Charlestown*, 2 Gray, 84, 98-99. *Berkshire v. Cande*, 222 Mass. 87, 91, and cases cited.

"A statute which would be unconstitutional as applied to a certain class of cases, and is constitutional as applied to another class, may be held to have been intended to apply only to the latter class." *Atty.-Gen. v. Storage Battery Co.*, 188 Mass. 239, 241; *Berkshire v. Cande*, 222 Mass. 87, 90; *Commonwealth v. Express Co.*, 201 Mass. 564.

And, in general, a statute will, if possible, be so construed as to render it constitutional. *Commonwealth v. Downes*, 24 Pick. 227; *Logan v. Lawrence*, 201 Mass. 506; *Spranger v. Lawrence*, 201 Mass. 513.

An officer acting under an unconstitutional statute is just as liable as though he acted without any purported authority. *Kelly v. Bemis*, 4 Gray, 83.



### PREAMBLE

<sup>1</sup> THE end of the institution, maintenance and administration of government, is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness — The Body-politic is formed by a Voluntary association of individuals: It is a social compact, by which the whole people covenants with each Citizen, and each Citizen with the whole people, that all shall be governed by certain Laws for the Common good. It is the duty of the people, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them. WE, therefore, the People of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of his Providence, an opportunity, deliberately and peaceably, without fraud, violence or surprize, of entering into an Original, explicit and Solemn Compact with each other; and of forming a New Constitution of Civil Government, for Ourselves and Posterity; and devoutly imploring His direction in so interesting a Design, DO agree upon, ordain and establish, the following DECLARATION OF RIGHTS, AND FRAME OF GOVERNMENT, AS THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

### PART the First.

#### A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OF MASSACHUSETTS.

“The framers of the constitution did not undertake to define the precise boundaries beyond which legislative action could not be extended. . . . By the Declaration of the Rights of the Inhabitants of the Common-

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NOTE. — The text of the Constitution here printed is reproduced verbatim et literatim from the original parchments in the office of the Secretary of the Commonwealth. For convenience of reference, the paragraphs are numbered continuously.

wealth, they laid down the general rules and principles on which the constitution was founded, and by which the different departments of the government were to be regulated and controlled in the administration of the powers and duties with which they were respectively intrusted." *Clarke v. Cordis*, 4 Allen, 466, 473.

"The Declaration of Rights . . . was intended as a general declaration of the great, fixed and fundamental principles of reason and right which underlie our system of government and are the safeguards of liberty. It declares general principles which are to guide all departments of the government in their respective duties of making, executing, and interpreting laws; but it does not purport to lay down specific rules of action, or to exactly define the extent and limitations of the powers of each department. For these we must look to the other part of the Constitution, 'the Frame of Government.' And when we find that the general statements of the Declaration of Rights are qualified and limited by more specific provisions upon the same subject in the Frame of Government, the latter must control and govern." *Commonwealth v. Harri-man*, 134 Mass. 314, 325; *cf. Roberts v. Boston*, 5 Cush. 198, 206.

"In considering constitutional provisions, especially those embraced in the Declaration of Rights, . . . we are rather to regard them as the enunciation of great and fundamental principles . . . than as precise and positive directions and rules of action; and, therefore, in construing them, we are to look at the spirit and purpose of them, as well as the letter." *Jones v. Robbins*, 8 Gray, 329, 340.

<sup>2</sup> ART. I. ALL men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their Lives and Liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Judge Morton calls this article "the cornerstone of the Constitution." But he says that it does not prevent the Legislature from defining crimes and providing for punishment by fine, imprisonment, or even by the taking of life. *Commonwealth v. Kneeland* (dissenting opinion), 20 Pick. 206, 230.

"*Free and equal.*" This does not prevent the segregation of colored children in schools. *Roberts v. Boston*, 5 Cush. 198.

"*Lives and liberties.*" Imprisonment for debt is constitutional. *Commonwealth v. Badlam*, 9 Pick. 362. It is not unconstitutional to limit the hours which women may work in any one establishment, for it does not prevent any woman from doing extra work in another establishment. *Commonwealth v. Hamilton*, 120 Mass. 383.

There is no constitutional right to get drunk. *Commonwealth v. Morrisey*, 157 Mass. 471.

The constitutional guaranty of liberty does not contemplate unrestrained license. *Commonwealth v. Libbey*, 216 Mass. 356. Nor hostility to government in general. *Commonwealth v. Karvonen*, 219 Mass. 30.

The refusal to permit one to bury the dead body of a relative or friend, except under unreasonable restrictions, is unconstitutional. *Wyeth v. Cambridge*, 200 Mass. 474.

*"That of acquiring, possessing, and protecting property."* This right is reasserted in different language, in Article X of the Declaration of Rights, where it relates more particularly to eminent domain, and in Article XII, where it relates more particularly to punishment for crime. Most of the decisions under these three articles, on this point, will be collected under this article, leaving to the other two articles the decisions which relate more nearly to their general subject-matter.

This right, like all other rights guaranteed by the Constitution, is subject to reasonable regulation, interference and restriction, under what is known as the "police power" of the Legislature, whenever necessary to the public health, morals, safety or general welfare. It is also subject to the power of eminent domain. *Water Co. v. Boston*, 23 Pick. 360. Relative to the police power, see under the powers of the Legislature, Constitution, Ch. I, Sect. I, Art. IV.

The above right includes the right to make reasonable contracts relative to property. Statutes impairing this right are therefore unconstitutional. Examples: A statute prohibiting gift enterprises. Opinion of Justices, 208 Mass. 607. Or requiring employers to pay as much for imperfect as for perfect work. *Commonwealth v. Perry*, 155 Mass. 117, 121. Or requiring an employer to give reasons, and an opportunity to be heard, before discharging an employee. Opinion of Justices, 220 Mass. 627. Or prohibiting attaching to the sale of goods the condition not to trade with another dealer. *Commonwealth v. Strauss*, 191 Mass. 545.

A right of action is among the vested rights protected by the Constitution. Thus the right of a landowner for damages for a taking cannot be divested by a reconveyance of the land. *Hellen v. Medford*, 188 Mass. 42. Similarly, the right to damages for the laying out of a highway cannot be divested by a discontinuance of the highway. *Harrington v. Berkshire*, 22 Pick. 264. To obviate the unfairness of this rule, it was later provided that there should be no taking until actual entry on the land. *New Bedford v. Bristol*, 9 Gray, 346, 348.

It is unconstitutional to exempt trade unions from liability for actions of tort. Opinion of Justices, 211 Mass. 618. It is unconstitutional to transfer to a corporation formed to drain certain meadows the rights of action of owners of meadows who refuse to join the corporation. *Meadow Co. v. Tileston*, 133 Mass. 189.

But the purely statutory right of action to recover money paid in gambling may be divested by subsequent legislation. *Wilson v. Head*, 184 Mass. 515; *Yeomans v. Heath*, 185 Mass. 189.

There is no vested right of immunity from suit, and therefore the Legislature may create a method for the enforcement of existing obligations. *Converse v. Ayer*, 197 Mass. 443, 454. See also in general under Declaration of Rights, Art. XI.

Conversely, a right of action against one corporation cannot be made enforceable against a corporation formed to take over its assets on foreclosure. *Woodward v. Railway*, 180 Mass. 599. With regard, however, to the form of legal remedies, it has been held that there is no such thing as a vested right in any particular form of legal remedy. *Commonwealth v. Highway Comrs.*, 6 Pick. 501. For the Legislature's control over remedies and procedure, see under administration of justice, Constitution, Ch. I, Sect. 1, Art. IV.

Debts incurred before the passage of a State insolvency law cannot be affected by it. *Blanchard v. Russell*, 13 Mass. 1; *Kimberly v. Ely*, 6 Pick. 440; *Betts v. Bagley*, 12 Pick. 572.

But the remedy on such debts may be changed. *Bigelow v. Pritchard*, 21 Pick. 169. And debts contracted after its passage are contracted subject to its terms and hence may be barred. *Baker v. Wheaton*, 5 Mass. 509; *Blanchard v. Russell*, 13 Mass. 1; *Walsh v. Farrand*, 13 Mass. 19.

Franchises are among the vested rights protected by the Constitution. They cannot be controlled or destroyed by the Legislature, except under the police power, eminent domain power or tax power. (See *infra*.) Or under a reservation in the original grant. *Wales v. Stetson*, 2 Mass. 143; *Charles River Bridge v. Warren Bridge*, 7 Pick. 344; *B. & L. RR. v. S. & L. RR.*, 2 Gray, 1. Or in a general statute passed before the franchise was granted. *Thornton v. Railway*, 123 Mass. 32.

Yet the location of conduits by an electric light company in certain streets does not prevent the city authorities from vacating those streets. *Boston Electric Light Co. v. Terminal Co.*, 184 Mass. 566. And the mere incorporating of a water company does not confer on it a vested monopoly. *Water Co. v. Winthrop*, 192 Mass. 455, 464.

The Legislature cannot impose unnecessary burdens on franchises. Thus the Legislature cannot increase the width of draws which a toll bridge is required to maintain. *Commonwealth v. Proprietors of Bridge*, 2 Gray, 339.

And this rule extends even to franchises under charters which the Legislature has reserved the right to amend. *Commonwealth v. Essex Co.*, 13 Gray, 239. This was a fishway case; but compare *Comrs. v. Water Co.*, 104 Mass. 446, 456.

But existing rights may be enforced against a corporation. *Railroad v. Railroad Comrs.*, 162 Mass. 81.

And franchises are subject to eminent domain. See under Declaration of Rights, Art. X, "property." And to police power. See under Constitution, Ch. I, Sect. I, Art. IV. And to taxation. *Commonwealth v. Bank*, 5 Allen, 428; *Ammidown v. Freeland*, 101 Mass. 303. Unless the right to tax has been expressly relinquished. *Bank v. Apthorp*, 12 Mass. 252; *Hardy v. Waltham*, 7 Pick. 108.

Increased liability cannot constitutionally be imposed upon stockholders. *Commonwealth v. Bank*, 3 Allen, 42, 44.

The beneficiary of a reservation in a franchise obtains no vested right in the franchise as a contract, not being a party to the contract. *Brighton v. Wilkinson*, 2 Allen, 27.

Licenses are not contracts or property, and may be annulled at will. *Calder v. Kurby*, 5 Gray, 597; *Lowell v. Archambault*, 189 Mass. 70, 71; *Commonwealth v. Brennan*, 103 Mass. 70.

Consequently the Legislature may impose any restrictions on existing licenses as a condition of their continuing. *Moran v. Goodman*, 130 Mass. 158.

*A fortiori*, an unlicensed person can have no vested right in a license law. *Commonwealth v. Brennan*, 103 Mass. 70.

Public office is not property. It may be abolished or its term shortened. *Taft v. Adams*, 3 Gray, 126; *Opinion of Justices*, 117 Mass. 603. See also under Constitution, Ch. I, Sect. I, Art. IV.

But we should distinguish a contract of public employment, which is just as irrevocable as other contracts. *Chase v. Lowell*, 7 Gray, 534.

Relative to estates in land, the Legislature may enlarge the nature of an estate so as to make it more valuable for all concerned. *Holbrook v. Finney*, 4 Mass. 566; *Miller v. Miller*, 16 Mass. 59; *Annable v. Patch*, 3 Pick. 360; *Burghart v. Turner*, 12 Pick. 534; *Clarke v. Cordis*, 4 Allen, 466, 475. And may authorize the holder of a life estate to convey a fee, after properly securing the rights of the remainderman. *Sohier v. Hospital*, 3 Cush. 483. And may confirm titles to real estate conveyed by a husband, provided it leaves the homestead and dower rights unimpaired. *Wildes v. Vanvoorhis*, 15 Gray, 139; *Johnson v. Fay*, 16 Gray, 144. But cannot affect a contingent estate even before the happening of the contingency. *Dunn v. Sargent*, 101 Mass. 336.

The right of redemption of land sold for taxes may be changed so as to affect land already taxed but not yet sold. *Rogers v. Nichols*, 186 Mass. 440. But void tax sales cannot be cured. *Forster v. Forster*, 129 Mass. 559. And the right of redemption cannot be extended, with respect to land already sold. *Solis v. Williams*, 205 Mass. 350. With respect to property in general, see "property" under Declaration of Rights, Art. X.

There is no individual property in migratory fish. *Howes v. Grush*, 131 Mass. 207, 212; *Commonwealth v. Weatherhead*, 110 Mass. 175.

The right to work is property, and the Legislature is powerless to change its status. *Bogni v. Perotti*, 224 Mass. 152, 155.

It will be noted that a good many of the laws declared to constitute an unconstitutional deprivation of property are retroactive. On retroactive civil laws see under Declaration of Rights, Art. XII. On retroactive criminal laws see under Declaration of Rights, Art. XXIV.

<sup>3</sup> II. It is the right as well as the Duty of all men in society, publickly, and at stated seasons to worship the SUPREME BEING, the great Creator and preserver of the Universe. And no Subject shall be hurt, molested, or restrained, in his Person, Liberty, or Estate, for worshipping God in the manner and season most agreeable to the Dictates of his own conscience, or for his religious Profession or sentiments; provided he doth not Disturb the public peace, or obstruct others in their religious Worship. —

“Understanding the statute against blasphemy as we do, . . . that it is not intended to prevent or restrain the formation of any opinions or the expression of any religious sentiments whatever, but to restrain and punish acts which have a tendency to disturb the public peace, it is not repugnant to, but entirely consistent with this second article of the Declaration of Rights.” *Commonwealth v. Kneeland*, 20 Pick. 206, 221.

“The disbelief in the existence of any God is not a religious, but an antireligious sentiment.” But even apart from this, the rejection of a witness because he is an atheist would be no violation of this article. “It would not hurt, molest, or restrain him in his person, liberty or estate.” *Thurston v. Whitney*, 2 Cush. 104, 110.

Nor is this article violated by an order of a school committee that the schools shall be opened each morning with reading from the Bible and prayer, and that during the prayer each scholar shall bow his head, unless his parents should request that he be excused from so doing. *Spiller v. Woburn*, 12 Allen, 127, 129.

This article absolutely prohibits the establishment by statute of any particular religion. *Opinion of Justices*, 214 Mass. 599, 601.

This article does not permit the Salvation Army to parade without a license. It was not designed to prevent the adoption of reasonable rules and regulations for the use of public streets and places. *Commonwealth v. Plaisted*, 148 Mass. 375, 381.

<sup>4</sup> III. [As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a Community, but by the institution of the public Worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their govern-

ment, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several Towns, Parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own Expence, for the institution of the Public worship of God, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made Voluntarily. — AND the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the Subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can Conscientiously and conveniently attend — PROVIDED notwithstanding, that the several towns, Parishes, precincts, and other bodies Politic, or religious societies, shall, at all times, have the exclusive right of electing their public Teachers, and of contracting with them for their support and maintenance. — AND all monies paid by the Subject to the Support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised — AND every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the Law: and no subordination of any one sect or denomination to another shall ever be established by law.]

By Amendment XI, adopted in 1833, an entire new article was substituted for the above.

<sup>s</sup> IV. THE people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the UNITED STATES OF AMERICA in Congress assembled. —

"It is fundamental that under our jurisprudence the sovereign power cannot be impleaded in its own courts except by its consent, and then only in the precise manner and to the exactly limited extent, which may be pointed out in the terms in which that consent is expressed." *McArthur v. Commonwealth*, 197 Mass. 137, 138, and cases cited.

<sup>6</sup> V. ALL power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them. —

This article does not legalize the legislative referendum. Opinion of Justices, 160 Mass. 586, 588. But see under Art. VII. The legislative referendum is now legalized by Amendment XLII.

"*People*." This means citizens. Opinion of Justices, 7 Mass. 523, 525. Or legal voters. Opinion of Justices, 1917, Senate Doc. 512.

<sup>7</sup> VI. No man, nor Corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the Community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural. —

"Many legislative acts have a direct effect to confer on persons and sections of country very important advantages, such as those establishing roads, bridges, ports, and very many others, which have an immediate effect to enhance the value of real estate, to encourage particular branches of trade, and in various ways to confer valuable privileges. But when this is indirect and incidental, and not one of the purposes of the act, it cannot be considered as a violation of this article of the Bill of Rights." *Hewitt v. Charier*, 16 Pick. 353, 355.

Thus the following discriminatory statutes have been declared constitutional: That by-laws of the city of Boston need not be set forth at length in criminal complaints. *Commonwealth v. Worcester*, 3 Pick. 462, 473. That doctors must be licensed by the Medical Society or graduated from Harvard. *Hewitt v. Charier*, 16 Pick. 353, 355. That caucuses of a party which polled less than three per cent of the total vote must consist of at least twenty-five persons. *Miner v. Olin*, 159 Mass. 487, 490. Creation of fishing monopolies. *Commonwealth v. Hilton*, 174 Mass. 29, 33. Railroad monopoly. *B. & L. RR. v. S. & L. RR.*, 2 Gray, 1, 32. That only cer-



tain private organizations may drill with firearms. *Commonwealth v. Murphy*, 166 Mass. 171, 173. Restricting the number of liquor licenses. *Decie v. Brown*, 167 Mass. 290, 291. Licensing statutes in general. *Commonwealth v. Blackington*, 24 Pick. 352, 358-359. And see also under Constitution, Ch. I, Sect. I, Art. IV, on the licensing power of the Legislature.

But it is unconstitutional to give an absolute civil service preference to veterans, even though this be done in "consideration of services rendered the public." *Brown v. Russell*, 166 Mass. 14, 23, 25. But an advantage not connected with public office may be conferred for public service. The Legislature may delegate this power to towns. Opinion of Justices, 175 Mass. 599, 602. And a civil service preference to competent veterans is not objectionable. Opinion of Justices, 166 Mass. 589, 597.

<sup>8</sup> VII. GOVERNMENT is instituted for the Common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or Class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it. —

The case of *Brown v. Russell*, cited under the last article, really falls under the first part of this article. It would be for the profit and private interest of one class of men, for veterans, however deserving, to be given an absolute civil service preference.

"*Right to institute government*," etc. This right is apparently an inherent right, rather than a right under the Constitution. Opinion of Justices, 6 Cush. 573, 574.

<sup>9</sup> VIII. IN order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments. —

<sup>10</sup> IX. ALL elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments. —

For definition of "inhabitants" see Constitution, Ch. I, Sect. II, Art. II, and Amendment XXI.

This article relates only to qualifications for *elective* offices. *Brown v. Russell*, 166 Mass. 14, 21.

The Australian ballot fulfills rather than violates the requirement that "All elections ought to be free." *Cole v. Tucker*, 164 Mass. 486, 488-489.

"There is nothing in the Constitution which requires that the laws regulating elections for city and town officers shall be uniform throughout the Commonwealth." *Cole v. Tucker*, 164 Mass. 486, 489; *Graham v. Roberts*, 200 Mass. 152, 154.

The right to vote is a personal and political right. *Atty.-Gen. v. Apportionment Comrs.*, 224 Mass. 598, 601.

The Legislature may establish the qualifications for an office which the Constitution does not mention. See under Constitution, Ch. I, Sect. I, Art. IV, "all civil officers not provided for."

<sup>11</sup> X. EACH individual of the society has a right to be protected by it in the enjoyment of his life, Liberty and property, according to standing Laws. He is obliged, Consequently, to contribute his share to the expence of this protection; to give his personal service, or an equivalent, when necessary: But no part of the property of any individual, can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controulable by any other Laws than those to which their Constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. —

"*Life, liberty and property.*" Decisions on this right are collected under Declaration of Rights, Art. I.

"*Standing laws.*" This does not prohibit special legislation beneficial to all concerned, such as a resolve facilitating the settlement of some one estate. *Rice v. Parkman*, 16 Mass. 326; *Davison v. Cohonnot*, 7 Met. 388, 396. But it does prohibit the suspension of the statute of limitations for the benefit of a single individual. *Holden v. James*, 11 Mass. 396, 402-404. It does not prohibit the settlement of probate claims by means of compromise. *Clarke v. Cordis*, 4 Allen, 466, 474-475. The law for the examination of poor debtors is a standing law. *Swan v. Justices*, 224 Mass. 122. See also cases on the police power under Constitution, Ch. I, Sect. I, Art. IV, and on "law of the land" under Declaration of Rights, Art. XII.

"*His share.*" Compare the provisions of Constitution, Ch. I, Sect. I, Art. IV, relative to proportional taxation.

"*Property.*" See under Declaration of Rights, Art. I.

"The power of the State to take private property for the public use reaches every description of property within its jurisdiction, even when acquired by grant from the state. . . . The franchise of a corporation is not exempt." *Eastern RR. v. B. & W. RR.*, 111 Mass. 125, 130-131; *Bridge Corp. v. Lowell*, 4 Gray, 474, 480-482; *Water Co. v. B. & W. RR.*, 23 Pick. 360, 392; *Bridge Proprietors v. County Comrs.*, 103 Mass. 120, 123; *Springfield v. Railroad*, 4 Cush. 63; *B. & L. RR. v. S. & L. RR.*, 2 Gray, 1. But this would not justify taking the franchise from one company and transferring it to another, without gain to the public. *Water Co. v. B. & W. RR.*, 23 Pick. 360, 393.

Ponds and streams may be taken for water supply. *Watson v. Needham*, 161 Mass. 404, 410.

Property already appropriated to a public use may be reappropriated to another public use. *Water Power Co. v. B. & W. RR.*, 23 Pick. 360; *Eastern RR. v. B. & M. RR.*, 111 Mass. 125; *Metropolitan RR. v. Highland RR.* 118 Mass. 290, 293; *Old Colony RR. v. Water Co.*, 153 Mass. 561; *Easthampton v. County Comrs.*, 154 Mass. 424; *Boston v. Brookline*, 156 Mass. 172, 177; *Eldredge v. County Comrs.*, 185 Mass. 186; *Higginson v. Treasurer, etc., of Boston*, 212 Mass. 583.

Property less than the fee may be taken. *Ellis v. Welch*, 6 Mass. 246; *Parks v. Boston*, 15 Pick. 198.

The State cannot contract away the right of eminent domain. *Brimmer v. Boston*, 102 Mass. 19, 22-23; *Bridge Corp. v. Lowell*, 4 Gray, 474.

"*Be taken.*" It is not necessary that the property be physically taken from the possession of the owner to entitle him to compensation for its damage. *Old Colony RR. v. Plymouth*, 14 Gray, 155, 161-162.

The temporary use of property, accompanied by no unnecessary damage, is not a taking. *Winslow v. Gifford*, 6 Cush. 327. But occupancy which deprives the owner of possession and enjoyment for a distinct period of time is a taking. *Brigham v. Edwards*, 7 Gray, 359, 363.

The increased use of a street already taken is not a taking. See *infra*, under "reasonable compensation."

"*Public uses.*" Compare under taxation, Constitution, Ch. I, Sect. I, Art. IV.

The determination by the Legislature that the use is public is not conclusive. *Moore v. Sanford*, 151 Mass. 285, 288; *Miller v. Fitchburg*, 180 Mass. 32.

Examples of public use: Public ways. By Amendment XXXIX more land than is necessary for the way may be taken and sold at a profit. A private way to be paid for wholly by the person to whose house it leads. *Flagg v. Flagg*, 16 Gray, 175; *Denham v. County Comrs.*, 108 Mass. 202. Water supply. *Lumbard v. Stearns*, 4 Cush. 60; *Watson v. Needham*, 161 Mass. 404, 410; even for a town other than that in which the land is

taken. *Woodbury v. Water Co.*, 145 Mass. 509; *Burnett v. Boston*, 173 Mass. 173. Sewers. *Hildreth v. Lowell*, 11 Gray, 345. Garbage disposal. *N. Ward Co. v. Street Comrs.*, 217 Mass. 381. Telegraph and telephone lines. *Pierce v. Drew*, 136 Mass. 75. Flowage for fish culture. *Turner v. Nye*, 154 Mass. 579. Flowage for mills. *Milldam Corp. v. Newman*, 12 Pick. 467; *Hazen v. Essex Co.*, 12 Cush. 475.

Conversely, a dam may be removed for reclamation purposes. *Talbot v. Hudson*, 16 Gray, 417.

Other public uses: Reclamation of flats. *Moore v. Sanford*, 151 Mass. 285. Public parks. *Holt v. Somerville*, 127 Mass. 408, 413; *Higginson v. Treasurer, etc., of Boston*, 212 Mass. 583; *Land Co. v. Commonwealth*, 215 Mass. 371. Railroads. *Prince v. Crocker*, 166 Mass. 347. Sites for courthouses, schools and post offices. *Burt v. Insurance Co.*, 106 Mass. 356, 362-363. Hospitals. *Manning v. Bruce*, 186 Mass. 282. Land to be resold for homesteads. Amendment XLIII.

If a part of a tract of land is actually needed and the remainder is of little value, the whole may be taken in the interests of economy. Opinion of Justices, 204 Mass. 616. The fee may be taken when only an easement is needed. *Land Co. v. Commonwealth*, 215 Mass. 371, 374.

In general: "Everything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new sources for the employment of private capital and labor, indirectly contributes to the general welfare and to the prosperity of the whole community." *Talbot v. Hudson*, 16 Gray, 417, 425.

Examples of uses not public: Books for a privately operated public library. *Cary Library v. Bliss*, 151 Mass. 364, 379. A bridge for the use of a private business. Opinion of Justices, 208 Mass. 603. Land for resale. Opinion of Justices, 204 Mass. 616. But this has been affected to some extent by Amendments XXXIX and XLIII, though it still holds true with respect to matters outside those two amendments. See *Land Co. v. Commonwealth*, 215 Mass. 371.

As to the distinction between public use and private use: "From the nature of the case there can be no precise line. The power requires a degree of elasticity to be capable of meeting new conditions and improvements, and the ever increasing necessities of society. The sole dependence must be on the presumed wisdom of the sovereign authority, supervised, and in cases of gross error or extreme wrong, controlled by the dispassionate judgment of the courts." *Atty.-Gen. v. Williams*, 174 Mass. 476, 479, quoting the Connecticut Supreme Court.

We should differentiate from eminent domain "those small diminutions of property rights, which, although within the letter of constitutional protection, are necessarily incident to the free play of the machinery of government." *Bent v. Emery*, 173 Mass. 495, 496.

We should also differentiate the destruction of property dangerous to

the health of the community. *Baker v. Boston*, 12 Pick. 184. This may even extend to the taking of land. *Bancroft v. Cambridge*, 126 Mass. 438, 441; *Welch v. Boston*, 126 Mass. 442, note. We should also differentiate the regulation of property under the police power of the Legislature, which see under Constitution, Ch. I, Sect. I, Art. IV.

We should also differentiate taxation and the taking of property for taxes. *Howe v. Cambridge*, 114 Mass. 388, 390; *Rawson v. Spencer*, 113 Mass. 40, 45.

We should also differentiate the abolition of municipal corporations. *Whitney v. Stow*, 111 Mass. 368; *Rawson v. Spencer*, 113 Mass. 40.

None of the foregoing requires compensation. See *infra*, under "reasonable compensation."

"*The representative body of the people.*" The power of eminent domain is usually delegated to corporations, municipalities or individuals. *Burt v. Insurance Co.*, 106 Mass. 356, 362; *Water Co. v. Railroad*, 23 Pick. 360, 395-396; *Turnpike Co. v. Norfolk*, 6 Allen, 353; *Dorgan v. Boston*, 12 Allen, 223; *Turnpike Corp. v. Essex*, 100 Mass. 282; *Bridge Proprietors v. Essex*, 103 Mass. 120; *E. RR. Co. v. B. & M. RR.*, 111 Mass. 125; *Re Northampton Bridge*, 116 Mass. 442; *Brayton v. Fall River*, 124 Mass. 95; *Railroad v. County Comrs.*, 198 Mass. 584; *Boston v. Talbot*, 206 Mass. 82.

Consent is habitually given by the Legislature to the local exercise of the power by the United States. *Burt v. Ins. Co.*, 106 Mass. 356, 362.

The delegation must appear by express words or necessary implication. *Thacher v. Bridge Co.*, 18 Pick. 501; *Proprietors v. Commonwealth*, 164 Mass. 227.

The delegation of power cannot be assigned, without the assent of the Legislature. *Worcester v. N. & W. RR.*, 109 Mass. 103; *Abbott v. N. Y. & N. E. RR.*, 145 Mass. 450.

"*Public exigencies.*" "The Legislature are the sole and exclusive judges whether the exigency exists which calls on them to exercise their authority to take private property." *Talbot v. Hudson*, 16 Gray, 417, 424; *Dorgan v. Boston*, 12 Allen, 223, 230; *Holt v. Somerville*, 127 Mass. 408, 413; *Lynch v. Forbes*, 161 Mass. 302, 308; *Miller v. Fitchburg*, 180 Mass. 32. There is no constitutional right to have this question tried by a jury. *Lynch v. Forbes*, 161 Mass. 302.

The Legislature may determine the quantity necessary to be taken. *Dingley v. Boston*, 100 Mass. 544, 560. And the public interest involved. *Water Co. v. Winthrop*, 192 Mass. 455.

"*Reasonable compensation.*" "The duty of paying an adequate compensation, for private property taken, is inseparable from the exercise of the right of eminent domain. . . . Payment need not precede the seizure; but the means for securing indemnity must be such that the owner will be put to no risk or unreasonable delay." *Bridge Props. v. County Comrs.*, 103 Mass. 120, 124-125; *Morse v. Stocker*, 1 Allen, 150, 158.

The right to compensation can be asserted only by the owner, and once

waived cannot again be asserted. *Haskell v. New Bedford*, 108 Mass. 209, 214.

Compensation need not be given for indirect or consequential damage. *Callender v. Marsh*, 1 Pick. 418; *Charles River Bridge v. Warren Bridge*, 7 Pick. 344, 472; *Thurston v. Hancock*, 12 Mass. 220. Nor for a greater use of a street already taken. *Chase v. Sutton Co.*, 4 Cush. 152; *Atty.-Gen. v. Railroad*, 125 Mass. 515; *Pierce v. Drew*, 136 Mass. 75, 82; *Prince v. Crocker*, 166 Mass. 347, 362; *MacGinnis v. Gas Co.*, 220 Mass. 575; *Hyde v. B. & W. St. Ry.*, 194 Mass. 80; *Cheney v. Backer*, 198 Mass. 356; *Peabody v. Boston*, 220 Mass. 376, 378.

But some overhead structures impose an additional liability. *Lentell v. St. Railway*, 202 Mass. 115; *Opinion of Justices*, 208 Mass. 603. Although others do not. *Howe v. St. Railway*, 167 Mass. 46, 51.

No provisions for enforcing collection from the Commonwealth are necessary, it being presumed that the Commonwealth will pay its bills. *Talbot v. Hudson*, 16 Gray, 417, 431; *Conn. River RR. v. County Comrs.*, 127 Mass. 50, 55.

It is enough that the corporation exercising the eminent domain is made liable. *Brickett v. Aqueduct Co.*, 142 Mass. 394, 397. Or payment provided for out of the treasury of a county, town or city. *Conn. River RR. v. County Comrs.*, 127 Mass. 50, 54. But it is insufficient if the payment is to be made from a special limited fund. *Bent v. Emery*, 173 Mass. 495, 498. Or from the earnings of a railroad. *Conn. River RR. v. County Comrs.*, 127 Mass. 50, 56.

The rate of compensation need not be the same in different localities. *Burnett v. Commonwealth*, 169 Mass. 417, 425.

The fact that a person's compensation is eaten up in betterment assessment does not alter the adequacy of the compensation. *Dorgan v. Boston*, 12 Allen, 223.

No compensation is required for the reasonable exercise of the police power. *Baker v. Boston*, 12 Pick. 184; *Commonwealth v. Tewksbury*, 11 Met. 55; *Davidson v. Railroad*, 3 Cush. 91; *Commonwealth v. Alger*, 7 Cush. 53; *Watertown v. Mayo*, 109 Mass. 315; *Commonwealth v. Carter*, 132 Mass. 12; *Crocker v. Champlin*, 202 Mass. 437.

But oppressive regulation ceases to fall within the justification of the police power and becomes a taking of property. *Lyman v. Commissioners*, 211 Mass. 10.

No compensation for taking the waters of a great pond, as that is the State's inherent right. *Watuppa Reservoir v. Fall River*, 147 Mass. 548, 558-559.

It is not unconstitutional to estimate damages as of the date of the formal taking and interest from the date of actual entry. *Edmands v. Boston*, 108 Mass. 535. Nor to set the rate of interest at four per cent. *Norcross v. Cambridge*, 166 Mass. 508, 512.

<sup>12</sup> XI. EVERY subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; compleatly, and without any denial; promptly, and without delay; conformably to the laws. —

It would be unconstitutional to provide that no action could be maintained for the unlawful seizure of intoxicating liquors. *Fisher v. McGirr*, 1 Gray, 1, 47-48.

The existence of this article removes all excuse for violent resistance to unconstitutional legislation. *Ela v. Smith*, 5 Gray, 121, 142.

This article is the basis for the requirement that certain pleadings be sworn to. *Hunt v. Lucas*, 99 Mass. 404, 411.

<sup>13</sup> XII. No subject shall be held to answer for any Crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be Compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favourable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

*First sentence.* This has no applicability to poor debtor proceedings. *Frost's Case*, 127 Mass. 550, 554. This sentence only requires such particularity of allegation as may be of service to the accused in enabling him to understand the charge and to prepare his defense. *Commonwealth v. Robertson*, 162 Mass. 90, 96; *Commonwealth v. Farmer*, 218 Mass. 507, 509. Thus it is not unconstitutional to convict the accused of a less crime of the same sort as charged. *Commonwealth v. Lang*, 10 Gray, 11, 13-14; *Commonwealth v. Gardner*, 11 Gray, 438, 445.

A complaint is not unconstitutional which charges the crime in general terms. *Commonwealth v. Davis*, 11 Pick. 432; *Commonwealth v. Cody*,

165 Mass. 133, 137. The remedy of the accused being to move for specifications. *Commonwealth v. Bennett*, 118 Mass. 443. Nor is it unconstitutional to abolish purely technical defenses on points of form. *Commonwealth v. Hall*, 97 Mass. 570, 573-574. Nor to dispense with the necessity of purely formal averments. *Commonwealth v. Frelove*, 150 Mass. 66. Nor to permit the amendment of indictments. *Commonwealth v. Holley*, 3 Gray, 458, 459-460. An indictment need not allege conclusions of law. *Sturtevant v. Commonwealth*, 158 Mass. 598, 600-601. Nor need it negative exceptions. *Commonwealth v. Gagne*, 153 Mass. 205, 210.

An objection to the form of a criminal process is waived if not made before judgment. *Commonwealth v. Walton*, 11 Allen, 238, 240-241.

If the punishment is more severe in case there have been former convictions, it is unconstitutional to provide that the complaint need not set forth former convictions. *Commonwealth v. Harrington*, 130 Mass. 35, 36; *Commonwealth v. Morrissey*, 157 Mass. 471, 473-474.

*"Furnish evidence against himself."* The accused shall be subject to no injurious consequences, under the law, by reason of availing himself of this privilege. But the law is not concerned with how his reputation may suffer thereby. If the accused becomes a witness he throws away his shield, and may be fully cross-examined. *Commonwealth v. Mullen*, 97 Mass. 545, 546; *Commonwealth v. Smith*, 163 Mass. 411, 430-433. It is a mistrial for opposing counsel to comment on the defendant's refusal to testify, even if his own counsel comments. *Commonwealth v. Scott*, 123 Mass. 239.

This article applies to testimony in other proceedings than a trial of the person claiming the privilege, including testimony before the Legislature. *Emery's Case*, 107 Mass. 172, 180-185. And questions by the Bank Commissioner. *Commonwealth v. Bank*, 21 Pick. 542.

Seizure of evidence on search warrants is no violation of this article. *Commonwealth v. Dana*, 2 Met. 329, 337.

Use on appeal of evidence offered below by the accused is no violation. *Commonwealth v. Carbin*, 143 Mass. 124, 126.

*"Witnesses . . . face to face."* *Ex parte* proceedings are therefore unconstitutional. *Fisher v. McGirr*, 1 Gray, 1, 33.

*"To be fully heard in his defence."* Counsel form a valuable part of the defense. *Conant v. Burnham*, 133 Mass. 503, 505.

*"Deprived of his property."* On the meaning of "property" see under Declaration of Rights, Arts. I and X. Revocation of a license or franchise for breach of condition is not such a deprivation. *Commonwealth v. Bank*, 21 Pick. 542. Nor is the abatement of a nuisance. *Carleton v. Rugg*, 149 Mass. 550, 553-555. Nor seizure of liquors. *Commonwealth v. Intoxicating Liquors*, 172 Mass. 311, 314. See also cases on police power under Constitution, Ch. I, Sect. I, Art. IV.

*"Judgment of his peers."* This does not apply to supplemental proceedings in actions for necessities. *Brown's Case*, 173 Mass. 498, 500-



501. But does apparently apply to a court martial inflicting a fine. *Brooks v. Daniels*, 22 Pick. 498.

Inferior courts may be given the right to convict for minor crimes, provided there is a right of appeal to a court where trial by jury may be had. *Sullivan v. Adams*, 3 Gray, 476, 477; *Jones v. Robbins*, 8 Gray, 329, 341. It is not unconstitutional to deprive a father of his property in a neglected child by committing it without a jury trial, for the father may reopen the case at any time. *Farnham v. Pierce*, 141 Mass. 203, 204-206.

The Legislature may pass laws regulating the means of exercising the right of trial by jury, and may provide for a default upon failure by the defendant to avail himself of these means. *Commonwealth v. Whitney*, 108 Mass. 5, 6; *Batchelder v. Commonwealth*, 109 Mass. 361.

It is not unconstitutional for residents of a county to sit on a jury on a prosecution for unlawfully obtaining money from the county. *Commonwealth v. Brown*, 150 Mass. 334.

The grant of a new trial is no infringement of the right of jury trial. *Commonwealth v. Anthes*, 5 Gray, 185, 231, 241; *Commonwealth v. McElharney*, 111 Mass. 439, 441; *Opinion of Justices*, 207 Mass. 606, 608.

A conviction for a misdemeanor, in a case tried by consent before eleven jurors, is valid. *Commonwealth v. Dailey*, 12 Cush. 80.

A pardoned prisoner may be reimprisoned for his original offence without a jury trial upon a breach of the condition of his pardon. *Kennedy's Case*, 135 Mass. 48, 51-52.

The right of peremptory challenge by the Commonwealth is no infringement on the right of jury trial. *Commonwealth v. Dorsey*, 103 Mass. 412, 418-419. There is no right to have the jury polled on their verdict. *Costley v. Commonwealth*, 118 Mass. 1, 28.

The jury must be governed by the instructions of the judge on matters of law. *Commonwealth v. Rock*, 10 Gray, 4.

The Legislature may define the class from which the jurors shall be taken and the method of their selection, and may authorize the overlooking of irregularities therein. *Commonwealth v. Brown*, 121 Mass. 69. Disqualifications may be waived. *Commonwealth v. Wong Chung*, 186 Mass. 231, 237.

In general the Legislature may regulate the mode in which the right shall be exercised, and such regulation does not impair the substance of the right. *Bothwell v. Boston El.*, 215 Mass. 467, 472.

See under Article XV of the Declaration of Rights, on jury trial in civil cases. For further decisions on jury trial in criminal cases, see *infra*, under "infamous punishment."

"*Law of the land.*" Summary punishment for contempt is within the law of the land. *Kerrigan's Case*, 158 Mass. 220, 221-222. And may be exercised by the courts and the Legislature, but cannot be delegated to municipal boards or officers. *Whitcomb's Case*, 120 Mass. 120-124.

Proceedings *in rem* without personal service are within the law of the land. *Tyler v. Court*, 175 Mass. 71, 75; *Gately v. Railroad*, 171 Mass. 494. So are disbarment proceedings. *Re Allin*, 224 Mass. 9, 11.

The accused waives his exceptions by jail breaking. *Commonwealth v. Andrews*, 97 Mass. 543, 544.

The Legislature, as *parens patriæ*, can care for those unable to care for themselves, such as insane persons, neglected children, infants unborn, parties unascertained, etc. *Dowdell*, Petitioner, 169 Mass. 387, 389; *Loring v. Hildreth*, 170 Mass. 328, 329-331; *Le Donne*, Petitioner, 173 Mass. 550, 552; *Chamber's Case*, 221 Mass. 178.

The Legislature cannot interfere with pending cases, nor impair or set aside judgments. *Denny v. Mattoon*, 2 Allen, 361, 377-382. Although it may cure defects and informalities in legal and other proceedings. *Denny v. Mattoon*, 2 Allen, 361, 383; *Walter v. Bacon*, 8 Mass. 468; *Patterson v. Philbrook*, 9 Mass. 151; *Locke v. Dane*, 9 Mass. 360; *Spaulding v. Nourse*, 143 Mass. 490, 492-494; *Fowler v. Danvers*, 8 Allen, 80; *Weed v. Donovan*, 114 Mass. 181; *Granara v. Cemetery Assn.*, 218 Mass. 387, 391. But not in void tax sales. *Forster v. Forster*, 129 Mass. 559.

The Legislature cannot extend the effect of existing attachments. *Hanscom v. Gas Co.*, 220 Mass. 1, 5-6.

Compare the decisions on legislative interference with the judiciary under Declaration of Rights, Art. XXX, and on legislative control of the administration of justice under Constitution, Ch. I, Sect. I, Art. IV.

In general, see under "standing laws," Declaration of Rights, Art. X, and under estates in land, Declaration of Rights, Art. I.

"*Infamous punishment . . . without trial by jury.*" It is unconstitutional to permit imprisonment in the State Prison without a jury trial. *Nolan's Case*, 122 Mass. 330, 332; *Commonwealth v. Horregan*, 127 Mass. 450, 451. Even though the prisoner could have had a jury trial on appeal. *Jones v. Robbins*, 8 Gray, 329, 341-349.

<sup>14</sup> XIII. IN criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

This does not prevent the proof of facts occurring abroad, which are material to sustain a prosecution here for a crime committed here. *Commonwealth v. Holt*, 121 Mass. 61, 62-63.

Nor a trial of an offence in another county than that in which it was committed. *Commonwealth v. Parker*, 2 Pick. 550, 553.

Nor a change of venue to secure a fair trial. *Crocker v. Justices*, 208 Mass. 162, 175.

But it does prevent punishing a man for a crime committed in another State. *Bradley v. Burton*, 151 Mass. 419, 421.

<sup>15</sup> XIV. EVERY subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil Officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws. —

*“Unreasonable searches.”* Search warrants cannot be used in support of private rights. *Robinson v. Richardson*, 13 Gray, 454, 456-458. Search warrants can be used to secure evidence for criminal prosecution. *Commonwealth v. Dana*, 2 Met. 329, 336-337. The method of search provided by a statute may be so summary as to render the statute unconstitutional. *Fisher v. McGirr*, 1 Gray, 1, 28-36.

Evidence obtained by an illegal search is nevertheless admissible. *Commonwealth v. Tucker*, 189 Mass. 457, 470, and cases cited.

*“Warrants.”* After conviction and arrest of judgment, the defendant cannot be bound over to await a new indictment. *Commonwealth v. Hayward*, 10 Mass. 34.

A warrant, without an identifying description, is void. *Commonwealth v. Crotty*, 10 Allen, 403, 404-405. This article does not prohibit arrest without warrant, when necessary. *Rohan v. Sawin*, 5 Cush. 281; *Commonwealth v. Phelps*, 209 Mass. 396, 410.

The seizure of milk samples and the inspection of premises where liquor business is carried on do not require a warrant and are not violations of this article. *Commonwealth v. Carter*, 132 Mass. 12, 14-15; *Commonwealth v. Drury*, 126 Mass. 269, 273. The seizure of liquors without a warrant is not unconstitutional. *Jones v. Root*, 6 Gray, 435.

*“Special designation.”* Statute held void because it permitted the seizure of articles other than those designated. *Fisher v. McGirr*, 1 Gray, 1, 29.

*“Formalities prescribed by the laws.”* “That is, the common law, in cases within that law, and the statute law, in other cases.” *Commonwealth v. Lottery Tickets*, 5 Cush. 369, 370.

<sup>16</sup> XV. IN all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure

shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners wages, the legislature shall hereafter find it necessary to alter it. —

“Trial by jury, at the time of the adoption of our Constitution, included not only the presence of a jury for the determination of facts, but also the supervision and guidance of a presiding judge who should direct the course of the trial, pass upon questions as to the admissibility of evidence and instruct the jury in matters of law, so that the result of the trial might establish the rights of the parties conformably to the law of the land. It included also, as a part of the power of the judge, a right, upon application of an aggrieved party, to set aside the verdict if it was rendered by the jury in disregard of their manifest duty, or under some grave mistake which if not corrected would work a miscarriage of justice.” Opinion of Justices, 207 Mass. 606, 608.

Thus the grant of a new trial is no infringement of the right. *Peirson v. Boston El.*, 191 Mass. 223, 230; Opinion of Justices, 207 Mass. 606, 608. In fact, a new trial after disagreement is a part of the right. *Mendon v. Worcester*, 10 Pick. 235. The right of trial by jury continues in every new trial. Opinion of Justices, 207 Mass. 606, 610.

In a suit at law over real property the right is absolute. *Weeks v. Brooks*, 205 Mass. 458, 463.

This article “has no application to a party who comes in voluntarily under the provisions of a statute which provided for the determination of his rights and obligations in another manner . . . than by a jury trial.” *Gas Co. v. Wakefield*, 161 Mass. 432, 439.

A statute prescribing the rules of evidence does not violate the right of jury trial. *Holmes v. Hunt*, 122 Mass. 505, 516–517.

It is enough to grant a jury trial on appeal or if claimed. *Bond v. Bond*, 19 Mass. 382, 385; *Foster v. Morse*, 132 Mass. 354; *Hapgood v. Doherty*, 8 Gray, 373; *O’Loughlin v. Bird*, 128 Mass. 600, 602–603.

It is no infringement of the right, to provide that on appeal only such issues may be tried as were tried below. *O’Loughlin v. Bird*, 128 Mass. 600, 603. Or only such as are specified in the appeal. *Mead v. Cutler*, 194 Mass. 277.

This article does not create a right of appeal *per se*. *Mountfort v. Hall*, 1 Mass. 443.

The Legislature may restrict new trials to cases in which a motion is made and reasons stated. *Peirson v. Boston El.*, 191 Mass. 223, 229; *Loveland v. Rand*, 200 Mass. 142.

And in general the Legislature may regulate the mode in which the right to trial by jury shall be exercised, and such regulation does not impair the substance of the right. *Bothwell v. Boston El.*, 215 Mass. 467, 472; *Higgins v. Boston El.*, 214 Mass. 335.

A party may waive his right to trial by jury. *Foster v. Morse*, 132 Mass. 354; *Boyden v. Lamb*, 152 Mass. 416, 419; *Palmer v. Lavers*, 218 Mass. 286.

There is no general right of jury trial in equity cases. For it was "heretofore otherways used and practiced." *Shapira v. D'Arcy*, 180 Mass. 377; *Parker v. Simpson*, 180 Mass. 334; *Stockbridge v. Mixer*, 215 Mass. 415; *Stockbridge Co. v. Hudson Co.*, 102 Mass. 45, 47. Similarly in the case of insolvency. *Kempton v. Saunders*, 130 Mass. 236. And in the case of probate appeals. *Davis v. Davis*, 123 Mass. 590, 593. And in separate maintenance. *Bigelow v. Bigelow*, 120 Mass. 320; *Bucknam v. Bucknam*, 178 Mass. 229, 230. But the court will send issues to the jury whenever this is deemed essential to the rights of either party. *Hamilton v. Parker*, 11 Allen, 574; *Davis v. Davis*, 123 Mass. 590, 593. This discretion may be reviewed on appeal. *Bank v. Moulton*, 143 Mass. 543, 546. And the right is absolute in classes of cases essentially legal, for which the Legislature has provided equity procedure. *Powers v. Raymond*, 137 Mass. 483, 486; *Ward v. Hill*, 4 Gray, 593.

Mandamus to try title to office is not a suit between two or more persons, and hence there is no right of jury trial, in accordance with the customary law of the land. *Atty.-Gen. v. Sullivan*, 163 Mass. 446, 451-452.

No jury trial is necessary in the assessment of betterment taxes. *Howe v. Cambridge*, 114 Mass. 388, 390; *Chapin v. Worcester*, 124 Mass. 464, 468. Or water rates. *Larson v. Sewerage Comrs.*, 175 Mass. 242.

No right of jury trial exists in purely preliminary proceedings, such as the attachment of property. *O'Neil v. Glover*, 5 Gray, 144, 161; *Jackson v. Kimball*, 121 Mass. 204, 206. No right of jury trial exists on the question of the necessity of taking land by eminent domain. *Lynch v. Forbes*, 161 Mass. 302, 308. No right of jury trial exists in the perambulation or other establishment of town lines or the laying of boundaries of landing places. These acts are ministerial. *Gardner v. County Comrs.*, 183 Mass. 189, 191, 192; *Stone v. Charlestown*, 114 Mass. 214.

Under the workingmen's compensation act, the only right of jury trial is to determine whether the parties come under the operation of the act. *Young v. Duncan*, 218 Mass. 346, 352.

A statute which does not expressly provide for jury trial implies a jury trial wherever one would be proper, and hence is constitutional. *Crocker v. Cotting*, 173 Mass. 68, 69. Compare the decisions on criminal jury trials under Declaration of Rights, Art. XII.

<sup>17</sup> XVI. THE Liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth. —

"It was intended to prevent all such *previous restraints* upon publications as had been practiced by other governments. . . . The liberty of the press was to be unrestrained, but he who used it was to be responsible in case of its abuse." In other words, the Constitution is no bar to an action of newspaper libel. *Commonwealth v. Blanding*, 3 Pick. 304, 313-314.

This article does not apply to the oral publication of the text of a play. *Commonwealth v. McGann*, 213 Mass. 213.

"The intention of the article in question was, to insure the general right of publication, at the same time leaving every citizen responsible for any offense capable of being committed . . . any other construction of the article would be absurd and impracticable, and inconsistent with the peace and safety of the state, and with the existence of free government." *Commonwealth v. Kneeland*, 20 Pick. 206, 219.

<sup>18</sup> XVII. THE people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in an exact subordination to the Civil authority, and be governed by it. —

"The right to keep fire-arms . . . does not protect him who uses them for annoyance or destruction." *Commonwealth v. Blanding*, 3 Pick. 304, 314.

The right to suppress riot does not depend in any way upon the constitutionality or unconstitutionality of the law which the riot is resisting. *Ela v. Smith*, 5 Gray, 121, 142.

"The right to keep and bear arms for the common defence does not include the right to associate together as a military organization, or to drill and parade with arms in cities and towns, unless authorized so to do by law." *Commonwealth v. Murphy*, 166 Mass. 171, 172.

The Legislature may regulate and limit the mode of carrying arms, and may prohibit the carrying of concealed weapons. *Commonwealth v. Murphy*, 166 Mass. 171, 172.

<sup>19</sup> XVIII. A FREQUENT recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their Officers and representatives: and they have a right to require of their law givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

<sup>20</sup> XIX. THE people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good;

Not all retroactive legislation is *ex post facto*. The term applies only to penal or criminal matters. On retroactive statutes of a civil nature see under Declaration of Rights, Art. XII, "law of the land," and also under Constitution, Ch. I, Sect. I, Art. IV. *Locke v. Dane*, 9 Mass. 360. A statute which mitigates the penalty or one changing procedure, penal administration or prison discipline is unobjectionable; although it is going too far to cut off the right of deduction for good behavior. *Murphy v. Commonwealth*, 172 Mass. 264, 268-269. Mitigation of penalty. *Commonwealth v. Wyman*, 12 Cush. 237; *Commonwealth v. Gardner*, 11 Gray, 438, 443; *Dolan v. Thomas*, 12 Allen, 421, 424. Similarly if the form of sentence is changed without making the sentence more severe. *Commonwealth v. Brown*, 167 Mass. 144. Prison discipline. *Storti's Case*, 180 Mass. 57, 59.

If the penalty is increased since the crime, unless there is a saving clause, the criminal cannot be punished at all, for the old law is repealed and the new law cannot constitutionally apply. *Flaherty v. Thomas*, 12 Allen, 428, 434-435.

It is not unconstitutional to take into account, under the habitual criminal act, convictions prior to the passage of the act. *Commonwealth v. Graves*, 155 Mass. 163, 165; *Sturtevant v. Commonwealth*, 158 Mass. 598, 601; *Commonwealth v. Ellis*, 207 Mass. 572; *Re Ross*, 2 Pick. 165; *Plumbly v. Commonwealth*, 2 Met. 413; *Jacquinn v. Commonwealth*, 9 Cush. 279; *McDonald v. Commonwealth*, 173 Mass. 322.

The creation of a new court, or giving jurisdiction to an existing court, to try offenses previously committed, is not *ex post facto*. *Commonwealth v. Phillips*, 11 Pick. 28.

Laws which relate merely to procedure are not *ex post facto*. *Jacquinn v. Commonwealth*, 9 Cush. 279; *Commonwealth v. Brown*, 121 Mass. 69; *Commonwealth v. Kelly*, 184 Mass. 320. At least, where they do not dispense with any substantial protections. *Commonwealth v. Phelps*, 210 Mass. 78.

The substitution of indeterminate sentences with a maximum of not more than the existing sentence, is beneficial and hence not objectionable as *ex post facto*. *Commonwealth v. Brown*, 167 Mass. 144, 146.

<sup>26</sup> XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature. —

<sup>27</sup> XXVI. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual Punishments.

This article is directed to the courts and not the Legislature. *Sturtevant v. Commonwealth*, 158 Mass. 598, 600.

"Cruel or unusual punishments." The following punishments have been held not to be cruel or unusual: Ten dollars, costs, and twenty to thirty days, for first unlawful sale of liquor. *Commonwealth v. Hitchings*,

*v. Parkman*, 16 Mass. 326; *Davison v. Johannot*, 7 Met. 388, 396. See also under Declaration of Rights, Art. VI.

Local option is not an infringement of the above article. *Stone v. Charlestown*, 114 Mass. 214, 222.

<sup>22</sup> XXI. THE freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

This is the privilege of the individual members in the exercise of the functions of their office. The member need not be in his seat or even in the chamber; he may be in joint session, or in committee, or even in official conversation with another member. It is immaterial that he is violating the rules of the body. But the mere fact of choosing the chamber for his remarks does not entitle the member to the privilege. *Coffin v. Coffin*, 4 Mass. 1, 28-30.

<sup>23</sup> XXII. THE legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require. —

<sup>24</sup> XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied under any pretext whatsoever, without the consent of the people or their Representatives in the legislature. —

"The right thus recognized and declared was secured by a corresponding provision in the frame of government," namely, Constitution, Ch. I, Sect. I, Art. IV. *Lowell v. Oliver*, 8 Allen, 247, 252.

<sup>25</sup> XXIV. LAWS made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

This article prohibits *ex post facto* laws.

"Punish." It is not punishment to require fathers of illegitimate children to support them. *Commonwealth v. Callaghan*, 223 Mass. 150, 151.

This article has been held not to apply to an *ex post facto* law passed before the adoption of the Constitution. *McNeil v. Bright*, 4 Mass. 282. But see *Wilkins v. Jewett*, 139 Mass. 29, which apparently overrules it.



Not all retroactive legislation is *ex post facto*. The term applies only to penal or criminal matters. On retroactive statutes of a civil nature see under Declaration of Rights, Art. XII, "law of the land," and also under Constitution, Ch. I, Sect. I, Art. IV. *Locke v. Dane*, 9 Mass. 360. A statute which mitigates the penalty or one changing procedure, penal administration or prison discipline is unobjectionable; although it is going too far to cut off the right of deduction for good behavior. *Murphy v. Commonwealth*, 172 Mass. 264, 268-269. Mitigation of penalty. *Commonwealth v. Wyman*, 12 Cush. 237; *Commonwealth v. Gardner*, 11 Gray, 438, 443; *Dolan v. Thomas*, 12 Allen, 421, 424. Similarly if the form of sentence is changed without making the sentence more severe. *Commonwealth v. Brown*, 167 Mass. 144. Prison discipline. *Storti's Case*, 180 Mass. 57, 59.

If the penalty is increased since the crime, unless there is a saving clause, the criminal cannot be punished at all, for the old law is repealed and the new law cannot constitutionally apply. *Flaherty v. Thomas*, 12 Allen, 428, 434-435.

It is not unconstitutional to take into account, under the habitual criminal act, convictions prior to the passage of the act. *Commonwealth v. Graves*, 155 Mass. 163, 165; *Sturtevant v. Commonwealth*, 158 Mass. 598, 601; *Commonwealth v. Ellis*, 207 Mass. 572; *Re Ross*, 2 Pick. 165; *Plumbly v. Commonwealth*, 2 Met. 413; *Jacquinn v. Commonwealth*, 9 Cush. 279; *McDonald v. Commonwealth*, 173 Mass. 322.

The creation of a new court, or giving jurisdiction to an existing court, to try offenses previously committed, is not *ex post facto*. *Commonwealth v. Phillips*, 11 Pick. 28.

Laws which relate merely to procedure are not *ex post facto*. *Jacquinn v. Commonwealth*, 9 Cush. 279; *Commonwealth v. Brown*, 121 Mass. 69; *Commonwealth v. Kelly*, 184 Mass. 320. At least, where they do not dispense with any substantial protections. *Commonwealth v. Phelps*, 210 Mass. 78.

The substitution of indeterminate sentences with a maximum of not more than the existing sentence, is beneficial and hence not objectionable as *ex post facto*. *Commonwealth v. Brown*, 167 Mass. 144, 146.

<sup>26</sup> XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature. —

<sup>27</sup> XXVI. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual Punishments.

This article is directed to the courts and not the Legislature. *Sturtevant v. Commonwealth*, 158 Mass. 598, 600.

"*Cruel or unusual punishments.*" The following punishments have been held not to be cruel or unusual: Ten dollars, costs, and twenty to thirty days, for first unlawful sale of liquor. *Commonwealth v. Hitchings*,

5 Gray, 482, 486. Same punishment for rape as for second degree murder. *Commonwealth v. Murphy*, 165 Mass. 66. Twenty-five years for conviction for a felony after a former conviction for felony or after two terms of at least three years each. *McDonald v. Commonwealth*, 173 Mass. 322, 328. Electrocution for murder. *Storti v. Commonwealth*, 178 Mass. 549.

To be cruel and unusual the punishment must be disproportionate to the offence. *Sturtevant v. Commonwealth*, 158 Mass. 598, 600. Or inhuman and barbarous. *McDonald v. Commonwealth*, 173 Mass. 322, 328.

The word "unusual" is to be construed with the word "cruel" and does not prohibit a means of punishment merely because previously unknown in Massachusetts. *Storti v. Commonwealth*, 178 Mass. 549, 553.

"*Excessive bail.*" The right to be let out on bail is waived by default. *Allen's Case*, 126 Mass. 224.

<sup>28</sup> XXVII. IN time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of War, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

<sup>29</sup> XXVIII. No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

<sup>30</sup> XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every Citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial Court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws. —

This article is the foundation for change of venue. *Crocker v. Justices*, 208 Mass. 162, 178-179.

*Impartial judges.* "The impartiality which it requires incapacitates one to act as a judge in a matter in which he has any peculiar interest, or in which a near relative or connection is one of the parties." It applies to civil and criminal cases, to judges of courts and of special tribunals. The motive of the judge is immaterial. The defect is incurable. *Hall v. Thayer*, 105 Mass. 219, 221-222, 224.

Exemption from a theoretic, imaginary, trifling or remote interest is not essential. *Commonwealth v. Reed*, 1 Gray, 472, 475. Thus it is immaterial that the judge or a juror is an inhabitant of the town to which the fine of the accused will accrue. *Commonwealth v. Ryan*, 5 Mass. 90, 93; *Commonwealth v. Worcester*, 3 Pick. 461, 472; *Hill v. Wells*, 6 Pick. 104, 108.

The fact that jurors have convicted the accused of one crime does not disqualify them from sitting to try him for another similar offence. *Commonwealth v. Hill*, 4 Allen, 591, 592.

The partiality of a judge is waived by a party who, knowing it, proceeds with the trial. *Crosby v. Blanchard*, 7 Allen, 385, 386-387. But apparently a personal interest by relationship cannot be waived. *Taylor v. County Commissioners*, 105 Mass. 225, 227.

A provision that the prosecutor shall be paid ten dollars costs if successful does not violate this article. *Commonwealth v. Munn*, 14 Gray, 361.

<sup>31</sup> XXX. IN the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men. —

This article does not have to do with incompatibility of offices. *Commonwealth v. Kirby*, 2 Cush. 577, 580. On that subject see Constitution, Ch. VI, Art. II.

*Matters neither legislative, executive nor judicial.* A subject of mixed nature is the apportionment of the cost of grade crossings or other public improvements. *N. L. N. RR. v. B. & A. RR.*, 102 Mass. 386, 387. The cost of a bridge between towns or counties may be apportioned by commissioners. *Bridge Co. v. Norfolk*, 6 Allen, 353, 357-358; *Turnpike Co. v. Essex*, 100 Mass. 282, 287; *Carter v. Bridge Proprietors*, 104 Mass. 236; *Adams, Petitioner*, 165 Mass. 497; *Boston, Petitioner*, 221 Mass. 468, 473. Or by the Legislature. *Brayton v. Fall River*, 124 Mass. 95; *Norwich v. Hampshire*, 13 Pick. 60, 61-62. Similarly as to a sewer. *Kingman, Petitioner*, 153 Mass. 566, 573. The Legislature may from time to time change an existing apportionment of upkeep of a bridge. *Atty.-Gen. v. Cambridge*, 16 Gray, 247. Or even an apportionment of the cost of construction. *Dow v. Wakefield*, 103 Mass. 267; *Scituate v. Weymouth*, 108 Mass. 128; *Agawam v. Hampden*, 130 Mass. 528. The cost of grade crossings may be apportioned by the courts or by commissioners appointed or elected, as the Legislature may prescribe. *N. L. N. RR. v. B. & A. RR.*, 102 Mass. 386, 387. The Legislature can regulate the whole matter and amend the statutes under which proceedings are

pending. *Re Northampton*, 158 Mass. 299, 302; *Lancy v. Boston*, 186 Mass. 128. And may even substitute a scheme of its own for that of the court or commission. *Steamboat Co. v. Fall River*, 183 Mass. 335, 540.

The power to direct the construction or removal of a sidewalk is judicial in character and legislative in form. The power to repair it is executive. The power to fix lines of travel is legislative. *Attorney-General v. Boston*, 142 Mass. 200, 204. The apportionment of county taxes is purely legislative. *Boston v. Chelsea*, 212 Mass. 127, 130.

*Legislature shall not exercise judicial powers.* The Legislature cannot impose a construction on an existing contract. *King v. Bank*, 15 Mass. 447. Or charter. *Commonwealth v. Bridge*, 2 Gray, 339. Or statute, except prospectively. *Todd v. Clapp*, 118 Mass. 495. Nor force the judge of probate to accept a bond in a form different from that prescribed by general laws. *Re Piquet*, 5 Pick. 65.

"I consider the House of Representatives . . . as a court having final and exclusive cognizance of all matters within its jurisdiction." *Coffin v. Coffin*, 4 Mass. 1, 34.

The Legislature cannot confirm proceedings held before a judge who had no power to act. *Denny v. Mattoon*, 2 Allen, 361; *Fayerweather v. Dickenson*, 2 Allen, 385, note. Nor confirm invalid tax sales. *Forster v. Forster*, 129 Mass. 559, 561. Nor prohibit suits against trade unions for tortious acts. *Opinion of Justices*, 211 Mass. 618. Nor make absolute all divorces *nisi*, granted under a previous statute. *Sparhawk v. Sparhawk*, 116 Mass. 315.

But the Legislature can license the sale of property of infants, although the courts have also been given that power. *Rice v. Parkman*, 16 Mass. 326; *Davison v. Johannot*, 7 Met. 388. And inquire into the affairs of a corporation with a view to declaring its charter forfeited. *Creese v. Babcock*, 23 Pick. 334, 346. And authorize that which a court has enjoined as a nuisance. *Sawyer v. Davis*, 136 Mass. 239, 243-245. And re-enact in a valid form a statute declared invalid by the courts. *Hall v. Street Commissioners*, 177 Mass. 434. And create a charitable corporation to administer a gift in trust to a city. *Ware v. Fitchburg*, 200 Mass. 61.

The Legislature can prescribe what shall be *prima facie* evidence. *Commonwealth v. Bank*, 21 Pick. 542; *Same v. Williams*, 6 Gray, 1; *Same v. Wallace*, 7 Gray, 222; *Same v. Rowe*, 14 Gray, 47. And can interfere with pending grade-crossing proceedings which are really of a nature neither legislative nor judicial. On this see *infra*.

The Legislature can pass laws requiring action by either other department, but cannot interfere with the action of either under existing laws. *Opinion of Justices*, 208 Mass. 610, 613.

*Legislature shall not exercise executive powers.* See the last above opinion. Also, under its power to create courts (see Constitution, Ch. I, Sect. I, Art. III) the Legislature may decree that the members of a new court shall consist of the members of another court; this is no infringement

on the Governor's power of appointment. *Wales v. Belcher*, 3 Pick. 508, 509.

*Executive shall not exercise legislative powers.* A provision for an executive budget is not unconstitutional. Opinion of Justices, 208 Mass. 610.

*Executive shall not exercise judicial powers.* A statute is not unconstitutional which provides that an injunction shall issue upon the finding by the Bank Commissioner that a bank is insolvent; this merely makes the finding *prima facie* evidence. *Commonwealth v. Bank*, 21 Pick. 542. Fixing the date for a hanging is not a judicial duty. *Costley v. Commonwealth*, 118 Mass. 1, 34-35. Clerks of courts may do judicial acts of a ministerial nature under general orders. *Tyler v. Court*, 175 Mass. 71, 81. The Insurance Commissioner may constitutionally determine whether a company has complied with the prescribed State form of policy, for the company has the right to appeal to the courts. *Insurance Co. v. Hardison*, 199 Mass. 190. A sealer of weights may confiscate scales which are not up to standard. *Scale Co. v. McBride*, 199 Mass. 503. The State Board of Arbitration may be empowered to decide when a strike ceases to exist, and thus suspend the operation of the law prohibiting advertising for strikebreakers. *Commonwealth v. Libbey*, 216 Mass. 356.

But the council of a city cannot be empowered to punish for contempt. *Re Whitcomb*, 120 Mass. 118.

*Judiciary shall not exercise executive powers.* The Supreme Court cannot be empowered to appoint supervisors of elections. *Re Supervisors*, 114 Mass. 247, 251. But can be empowered to fix water rates. *Janvrin, Petitioner*, 174 Mass. 514.

A court of equity cannot supervise the conduct of public officials in the performance of their public duties, but mandamus will lie to direct the performance of ministerial duties. *Larcom v. Odlin*, 160 Mass. 102, 110, and cases cited. And even to compel the performance of discretionary or political duties. *Attorney-General v. Apportionment Commissioners*, 224 Mass. 598, 609-610, and cases cited. But the Governor is not amenable to the courts for his conduct in the performance of *any* of his duties. *Rice v. Governor*, 207 Mass. 577, 579. The school committee of Boston is the final judge of the election of its members. *Peabody v. School Committee*, 115 Mass. 383, 384.

*Judiciary shall not exercise legislative powers.* The courts cannot determine the wisdom or expediency of a law. *Insurance Co. v. Commonwealth*, 133 Mass. 161; Opinion of Justices, 166 Mass. 589; *Nelson v. Blinn*, 197 Mass. 279; *Graham v. Roberts*, 200 Mass. 152; *Bailey v. Wood*, 202 Mass. 549; *Foster v. Curtis*, 213 Mass. 79. Similarly, in eminent domain cases the Legislature is the final judge of public exigency. *Miller v. Fitchburg*, 180 Mass. 32. And of public interest. *Water Co. v. Winthrop*, 192 Mass. 455. Although not of public use. *Miller v. Fitchburg*, 180 Mass. 32.

The courts cannot meddle in the internal affairs of the Legislature.

*Coffin v. Coffin*, 4 Mass. 1, 34. Nor can the Legislature delegate to the courts the power to investigate whether a member of the Legislature has committed a corrupt practice. *Dinan v. Swig*, 223 Mass. 516, 520.

## **PART the Second.**

### **THE FRAME OF GOVERNMENT.**

<sup>32</sup> THE people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body-politic, or State, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

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#### **CHAPTER I.**

#### **THE LEGISLATIVE POWER.**

##### **Section I.**

##### **THE GENERAL COURT.**

<sup>33</sup> ART. I. THE department of legislation shall be formed by two branches, a Senate and House of Representatives; each of which shall have a negative on the other. The legislative body shall assemble every year [on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May;] and shall be stiled, THE GENERAL COURT OF MASSACHUSETTS.

By amendment X, adopted in 1831, the General Court assembles on the first Wednesday in January instead of the last Wednesday in May.

<sup>34</sup> II. No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the Governor for his revisal; And if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in which soever the same shall have originated; who shall enter the objections sent down by

the Governor, at large, on their records, and proceed to reconsider the said bill or resolve. But if after such reconsideration, two-thirds of the said Senate or House of Representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall have the force of a law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth. —

<sup>35</sup> AND in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor within five days after it shall have been presented, the same shall have the force of a law. —

The bill must be laid before the Governor personally, and if he is absent, he has five days from the date of his return. *Opinion of Justices*, 99 Mass. 636; *Farwell v. Boston*, 192 Mass. 15, 19. But the Governor need not personally return the bill; it will be a sufficient delivery if he sends it by his secretary, even though he is out of the State when the bill is finally delivered. *Opinion of Justices*, 135 Mass. 594.

The "five days" must be days on which the General Court is sitting, therefore if the General Court finally adjourns before the five days have expired, an unreturned bill does not become a law. *Opinion of Justices*, 3 Mass. 567; Amendment I. The time expires when the office of the clerk of the originating branch closes on the fifth day. *Tuttle v. Boston*, 215 Mass. 57, 61.

<sup>36</sup> III. THE General Court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other Courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of Crimes, offences, pleas, processes, complaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same, whether the same be criminal or Civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixt; and for the awarding and making out of execution thereupon. To which Courts and judicatories are

hereby given and granted full power and authority, from time to time, to administer Oaths or affirmations, for the better discovery of truth in any matter in Controversy or depending before them. —

“The legislature has the right to mould the jurisdiction of all courts at its will, so as not to infringe any other provision of that instrument (i.e. the constitution). It may enlarge or diminish the power and duty of courts and magistrates.” *Wales v. Belcher*, 3 Pick. 508, 510. And see also under the next article and under Declaration of Rights, Art. XXX.

The Legislature can apparently transfer to a court created by it the duties of an officer who is required by the Constitution to be elected. *Dearborn v. Ames*, 8 Gray, 1, 14. Similarly, the duties of any court created by the Constitution, save only the Supreme Judicial Court, may be transferred by the Legislature to a court created by it. *Russell v. Howe*, 12 Gray, 147, 153; *Baker v. Fernald*, 12 Gray, 154.

<sup>37</sup> IV. AND further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable Orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said Commonwealth, the election and Constitution of whom are not hereafter in this Form of Government otherwise provided for; and to set forth the several duties, powers, and limits, of the several Civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several Offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose and levy, reasonable duties and excises, upon any produce, goods, wares, merchandize, and commodities,



whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same. —

<sup>38</sup> AND while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practiced, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order. —

*"All manner of wholesome and reasonable . . . laws."* This wide grant of legislative powers includes what is known as the "police power" of the Legislature, under which the Legislature may interfere to some extent with the rights guaranteed by the Constitution. These rights are held subject to reasonable control and regulation. *Commonwealth v. Alger*, 7 Cush. 53.

But "this provision does not authorize the legislature to take property from one person and give it to another, nor to take private property for public uses without compensation, nor wantonly to interfere with private rights." *Turner v. Nye*, 154 Mass. 579, 582. As to the line between public and private rights see *infra* under this same article; also under Declaration of Rights, Art. X.

Under the police power, the Legislature may promote the public safety, health, morals and general welfare. *Commonwealth v. Libbey*, 216 Mass. 356; *Opinion of Justices*, 207 Mass. 601; *Opinion of Justices*, 208 Mass. 619; *Mutual Loan Co. v. Martell*, 200 Mass. 482; *Wyeth v. Board of Health*, 200 Mass. 474; *Commonwealth v. Strauss*, 191 Mass. 545, 551. But may not, under the guise of the police power, confiscate property. *Durgin v. Minot*, 203 Mass. 26.

No compensation is required for acts done under the police power. *Newton v. Joyce*, 166 Mass. 83, 84. See also under Declaration of Rights, Art. X.

The Commonwealth cannot contract away the police power. *Commonwealth v. Railway*, 212 Mass. 82.

Thus corporations, even those having irrevocable charters, are subject to regulation. *Commonwealth v. Intoxicating Liquors*, 115 Mass. 153.

The police power is to be distinguished from the power of eminent do-

main. *Bent v. Emery*, 173 Mass. 495, 496; *Parker v. Commonwealth*, 178 Mass. 199. And see also under Declaration of Rights, Art. X.

The right of contract is subject to reasonable regulation. *Squire v. Tellier*, 185 Mass. 18, 20, and cases cited. Thus the Legislature may prescribe the form and effect of insurance policies. *Considine v. Insurance Co.*, 165 Mass. 462, 466. And the method of conducting the liquor business. (See *infra*.) And may require the weekly payment of wages. Opinion of Justices, 163 Mass. 589, 596; *Commonwealth v. Dunn*, 170 Mass. 140. This power of regulation is not confined to public employments nor to business affected with a public interest. Opinion of Justices, 163 Mass. 589, 595.

It is not unconstitutional to provide that an application for insurance shall not be admissible in evidence unless attached to the policy. *Considine v. Insurance Co.*, 165 Mass. 462. Nor to prohibit sales in bulk in fraud of creditors. *Squire v. Tellier*, 185 Mass. 18. Nor to require the assignment of a man's wages to be assented to by his employer and his wife. *Loan Co. v. Martell*, 200 Mass. 482. Nor to require an employer to post the hours of employment. *Commonwealth v. Riley*, 210 Mass. 387. Nor to require an employer, when advertising for help during a strike, to mention in the advertisement that a strike exists. *Commonwealth v. Libbey*, 216 Mass. 356. Nor to prohibit sales on condition that the purchaser will not deal in goods of others than the seller. *Commonwealth v. Strauss*, 191 Mass. 545, 553.

The question of the power to control public-service and other corporations is complicated by the fact that the passage of the act of March 11, 1831, made all subsequent charters subject to alteration and repeal. *Roxbury v. Railroad*, 6 Cush. 424, 431. Decisions, placed on the ground of this power to amend charters rather than on the ground of police power, will accordingly be omitted.

The Legislature may extend the existence of corporations after the time limited by their charters, in order to provide for their winding up. *Foster v. Bank*, 16 Mass. 245. The repeal of a charter does not impair the obligation of contracts made during the life of the corporation. *Thornton v. Railway*, 123 Mass. 32.

The Legislature may regulate fares and change the locations of street railways. *Clinton v. Worcester Ry.*, 199 Mass. 279, 288; *Arlington v. Bay State Ry.*, 224 Mass. 463.

Of course, the State may determine the hours of labor of employees of itself and its subdivisions, or of employees of contractors on State work. Opinion of Justices, 208 Mass. 619; *Woods v. Woburn*, 220 Mass. 416, 418.

The liquor business may be very strictly regulated and licensed. *Commonwealth v. Blackington*, 24 Pick. 352; *Commonwealth v. Clapp*, 5 Gray, 97; *Commonwealth v. Murphy*, 10 Gray, 1; *Commonwealth v. Bulsford*, 161 Mass. 61; *Commonwealth v. Intoxicating Liquors*, 172 Mass. 311, 314-315, and cases cited. Even though this regulation conflicts with the charter of a brewery. *Commonwealth v. Intoxicating Liquors*, 115 Mass. 153.

The power to prohibit the business carries with it the power to impose severe restrictions on it. *Howes v. Maxwell*, 157 Mass. 333; *Young v. Blaisdell*, 138 Mass. 344.

The Legislature has full control over the Massachusetts business of all corporations. *Commonwealth v. Nutting*, 175 Mass. 154; *Commonwealth v. Roswell*, 173 Mass. 119, 120.

Licensing is a familiar and effective method of regulation. In addition to liquor licenses, the following classes of licenses have been sustained: Doctors. *Commonwealth v. Porn*, 196 Mass. 326, 329; *Commonwealth v. Zimmerman*, 221 Mass. 184. Pawnbrokers. *Commonwealth v. Danziger*, 176 Mass. 290. Plumbers. *Commonwealth v. Beaulieu*, 213 Mass. 138. Dealers in small loans. *Dewey v. Richardson*, 206 Mass. 430, 432. Itinerant vendors. *Commonwealth v. Newhall*, 164 Mass. 338; *Commonwealth v. Crowell*, 156 Mass. 215. Insurance brokers. *Commonwealth v. Roswell*, 173 Mass. 119, 121. Stables. *Newton v. Joyce*, 166 Mass. 83.

Inspection is also justified by the police power. Samples may, without compensation, be taken for analysis. *Commonwealth v. Carter*, 132 Mass. 12.

Health regulations are within the police power. The Legislature may prohibit the use of buildings for noxious trades without the consent of local authorities. *Watertown v. Mayo*, 109 Mass. 315; *Taunton v. Taylor*, 116 Mass. 254. Or the digging of clams in infected waters. *Commonwealth v. Feeney*, 221 Mass. 323, 325. And authorize cities to raise the grade of lands to abate a nuisance, and assess the cost against the owners. *Bancroft v. Cambridge*, 126 Mass. 438; *Welch v. Boston*, 126 Mass. 442, note; *Nickerson v. Boston*, 131 Mass. 306. And conversely, may authorize doorsteps to project into the highway. *Cushing v. Boston*, 122 Mass. 173; 128 Mass. 330. And may authorize employers to commit a nuisance by whistles and bells installed on factories for the benefit of their workmen. *Sawyer v. Davis*, 136 Mass. 239; *Commonwealth v. Parks*, 155 Mass. 531, 532. And may authorize the prosecution of a man for having filth on his land, even though he did not put it there. *Commonwealth v. Cutler*, 156 Mass. 52, 55.

The Legislature may limit the hours of labor of women. *Commonwealth v. Hamilton*, 120 Mass. 383; *Commonwealth v. Connor*, 222 Mass. 299, 301; but see *Commonwealth v. Railroad*, 222 Mass. 206. And may require vaccination. *Commonwealth v. Pear*, 183 Mass. 242, 244. And prohibit the pollution of the water supply. *Sprague v. Dorr*, 185 Mass. 10, 11. And require the inspection and stamping of meat. *Commonwealth v. Moore*, 214 Mass. 19. And the connection of water-closets with the sewer. *Commonwealth v. Roberts*, 155 Mass. 281. And may prohibit the establishment of cemeteries without local permission. *Woodlawn v. Everett*, 118 Mass. 354, 363.

The protection of the public peace is within the police power. The Legislature may prohibit the establishment of vending stands near camp meetings without the permission of the meeting. *Commonwealth v. Bearse*,

132 Mass. 542. Or the carrying of red flags in parades. *Commonwealth v. Karvonen*, 219 Mass. 30. And may regulate the hours of places of amusement. *Commonwealth v. Colton*, 8 Gray, 488.

The Legislature may protect the public from fraud in the sale of food products. *Commonwealth v. Waite*, 11 Allen, 264; *Commonwealth v. Evans*, 132 Mass. 11; *Commonwealth v. Wetherbee*, 153 Mass. 159; *Commonwealth v. Schoffuer*, 146 Mass. 512; *Commonwealth v. Kelley*, 163 Mass. 169.

On the subject of regulations conflicting with free speech, see under Declaration of Rights, Art. XIX.

Public safety in general. Grade crossing abolition is valid, being an exercise of the legislative power to prevent accidents. *Re Selectmen of Norwood*, 161 Mass. 259. So also the prohibiting of blasting without a license. *Commonwealth v. Parks*, 155 Mass. 531.

The examination of banks and enjoining them if insolvent is constitutional. *Commonwealth v. Bank*, 21 Pick. 542.

The prevention of fires is within the police power. *Commonwealth v. Maletsky*, 203 Mass. 241, 245, and cases cited. The Legislature can authorize cities to prohibit wooden buildings. *Salem v. Maynes*, 123 Mass. 372.

The suppression of gambling is within the police power. *Crandell v. White*, 164 Mass. 54.

Preservation of game. The Legislature may forbid the taking of certain fish during the spawning season, even though this affect the rights of riparian proprietors of non-navigable streams. *Commonwealth v. Look*, 108 Mass. 452. And may require a dam owner to construct a fishway. *Comrs. v. Water Co.*, 104 Mass. 446. And may prohibit the sale of artificially propagated fish during the closed season, although these are the property of the man who raises them. *Commonwealth v. Gilbert*, 160 Mass. 157, 160. And may regulate the taking of shellfish. *Commonwealth v. Hilton*, 174 Mass. 29, 33; *Commonwealth v. Bailey*, 13 Allen, 541. The Fish and Game Commission may protect streams from pollution. *Lyman v. Commissioners*, 211 Mass. 10. The Legislature may permit the damming of streams for fish propagation; this is not eminent domain. *Turner v. Nye*, 154 Mass. 579.

Building regulations are constitutional. *Atty.-Gen. v. Williams*, 174 Mass. 476, 480. Similarly with harbor lines. *Commonwealth v. Alger*, 7 Cush. 53.

The Commonwealth may divert the flow of tides. *Home for Aged v. Commonwealth*, 202 Mass. 422; *Davidson v. Railroad*, 3 Cush. 91. And restrict the taking of gravel from beaches. *Commonwealth v. Tewksbury*, 11 Met. 55.

And prohibit the erection or maintenance of spite fences. *Smith v. Morse*, 148 Mass. 407; *Rideout v. Knox*, 148 Mass. 368.

The administration of justice is also subject to legislative regulation. There can be no vested right in any particular form of legal remedy. See under Declaration of Rights, Arts. I and X.

Thus the Legislature may provide for the survival of existing actions. *Wilbur v. Gilmore*, 21 Pick. 250. And may destroy the right of attachment even for existing debts. *Bigelow v. Pritchard*, 21 Pick. 169. Or the right of trustee process. *Geer v. Horton*, 159 Mass. 259. And may permit the striking out of parties to existing suits. *Knight v. Dorr*, 19 Pick. 48. And may change the method of proving even existing claims against an insolvent estate. *Jewett v. Phillips*, 5 Allen, 150. And may provide for set-offs. *Bank v. Soule*, 129 Mass. 528. And may grant remedies or additional remedies for the enforcement of existing rights. *Bemis v. Clark*, 11 Pick. 452; *Simmons v. Hanover*, 23 Pick. 188, 194; *Linzee v. Mixer*, 101 Mass. 512; *Converse v. Ayer*, 197 Mass. 443; *Rogers v. Ward*, 8 Allen, 387; *Wales v. Wales*, 119 Mass. 89. And may increase the rate of interest on an existing liability. *Commonwealth v. Bank*, 3 Allen, 42, 46.

And may grant a right of action against the owner of property on which the plaintiff is injured while working. *Hart v. Railroad*, 121 Mass. 510. And may permit the reporting of existing cases by judges other than those who tried them. *Godfrey v. Boston El.*, 215 Mass. 432.

The Legislature has a limited power to relieve even pending claims from defeat through mistakes in procedure. *Danforth v. Water Co.*, 178 Mass. 472.

The Legislature has power to change the rules of descent so as to affect any rights not yet vested. *Sewall v. Roberts*, 115 Mass. 262. And to change the rules of settlement of paupers. *Bridgewater v. Plymouth*, 97 Mass. 382.

The Legislature may permit the mortgage or sale of property held in trust. *Clarke v. Hayes*, 9 Gray, 426; *Sohier v. Trinity Church*, 109 Mass. 1, 17; *Long v. Simmons College*, 218 Mass. 135. But cannot dissolve such a trust. *Crawford v. Nies*, 220 Mass. 61, 65; 224 Mass. 474, 488.

Statutes of limitation merely affect the remedy and hence are constitutional. *Loring v. Alline*, 9 Cush. 68; *Call v. Haggard*, 8 Mass. 23; *Smith v. Morrison*, 22 Pick. 430. Provided they give a reasonable time for the enforcement of existing contracts. *Lewis v. Crowell*, 205 Mass. 497. The Legislature may alter the statute of limitations with respect to existing causes of action; but cannot remove a bar which is complete, nor shorten the time in such a way as not to give a reasonable time for the commencement of suit. *Bigelow v. Bemis*, 2 Allen, 496. And may even remove a bar that is complete if the original time limit was very short and the bar has only just become complete. *Dunbar v. Railroad*, 181 Mass. 383.

Costs may be abolished. *Re Goddard*, 16 Pick. 504, 508.

The Legislature may prescribe rules of evidence making certain things *prima facie* evidence. *Commonwealth v. Williams*, 6 Gray, 1; *Commonwealth v. Rowe*, 14 Gray, 47. And even making certain things conclusive evidence. *Kempton v. Saunders*, 130 Mass. 236; *Upham v. Raymond*, 132 Mass. 186. And may prohibit collateral attack on the validity of marriages by reason of insanity or idiocy. *Goshen v. Richmond*, 4 Allen, 458.

The Legislature may abolish defenses created by the courts. *Opinion of Justices*, 209 Mass. 607, 610.

It is to be noted that by Amendment II, adopted in 1821, the Legislature was given full power to establish and control municipalities. Its power to change town and county lines will, for convenience, be discussed under that article.

*Delegation of powers.* It has been broadly stated that the Legislature cannot delegate its power to enact laws. *Brodbine v. Revere*, 182 Mass. 598, 600; *Wyeth v. Cambridge*, 200 Mass. 474, 481. Yet there are many exceptions to this rule.

Thus the eminent domain power is almost always delegated. See under Declaration of Rights, Art. X.

On the matter of delegation to the judiciary see under Declaration of Rights, Art. XXX, "judiciary shall not exercise legislative powers," and the class of cases which strictly belong to none of the three departments.

On the matter of delegation to the executive it has been held that the power to make pilotage regulations may be delegated to the Governor and Council. *Martin v. Witherspoon*, 135 Mass. 175.

Similarly, administrative details and regulations verging on pure legislation may be enacted by State boards under the general authority of the Legislature. Such delegation has been had in the case of apportionment of county taxes and of grade crossing costs. See under Declaration of Rights, Art. XXX. Supervision of constructions of a public or quasi-public nature. *Commonwealth v. Essex*, 13 Gray, 239. Civil service regulations. Opinion of Justices, 138 Mass. 601. Regulation of public-service corporations. *Atty.-Gen. v. Railroad*, 160 Mass. 62. Health regulations. *Taunton v. Taylor*, 116 Mass. 254, 260. Game laws. *Commonwealth v. Feeney*, 221 Mass. 323, 325.

Similar matters may be delegated to local authorities. Such as health regulations. *Brodbine v. Revere*, 182 Mass. 598, 601; *Wyeth v. Cambridge*, 200 Mass. 474, 481. Fire regulations. *Commonwealth v. Maletsky*, 203 Mass. 241, 247. Traffic regulations. *Doherty v. Commonwealth*, 109 Mass. 355; *Commonwealth v. Mulhall*, 162 Mass. 496; *Brodbine v. Revere*, 182 Mass. 598, 601; *Commonwealth v. Kingsbury*, 199 Mass. 242. The selection of a tunnel route. *Codman v. Crocker*, 203 Mass. 146. Building regulations. *Commonwealth v. Maletsky*, 203 Mass. 241, 247; *Welsh v. Swasey*, 193 Mass. 364. Regulation of pedlars. *Commonwealth v. Fox*, 218 Mass. 498. Districting of a city. *Fitzgerald v. Boston*, 220 Mass. 503. And miscellaneous matters. *Lynn v. County Commissioners*, 148 Mass. 148.

But the regulations passed by local boards are held to a strict standard of reasonableness. *Wyeth v. Cambridge*, 200 Mass. 474, 481; *Commonwealth v. Maletsky*, 203 Mass. 241, 247; *Durgin v. Minot*, 203 Mass. 26, 31. And no such presumption of constitutionality attaches to them as attaches to acts of the Legislature. See the preliminary discourse on Principles of Constitutional Interpretation.

Delegation of legislative powers to the voters is now possible under Amendment XLII.

The Legislature has always had the power to provide that any law, which by its nature need not be uniform throughout the State, should take effect in any locality upon its acceptance by the voters of that locality. *Wales v. Belcher*, 3 Pick. 508; *Commonwealth v. Bennett*, 108 Mass. 27; *Commonwealth v. Dean*, 110 Mass. 357; *Stone v. Charlestown*, 114 Mass. 214, 221; *Lynn v. County Comrs.*, 148 Mass. 148, 151; *Prince v. Crocker*, 166 Mass. 347, 360; *Graham v. Roberts*, 200 Mass. 152, 157; *Barnes v. Chicopee*, 213 Mass. 1, 4. But the Legislature cannot submit to local option a law which by its nature must be uniform throughout the State. *Opinion of Justices*, 160 Mass. 586.

*"All civil officers . . . not . . . provided for."* The Legislature may establish the qualifications for any office which the Constitution does not mention. *Opinion of Justices*, 115 Mass. 602; *Peabody v. School Committee*, 115 Mass. 388, 385. And may delegate this power. *Opinion of Justices*, 138 Mass. 601, 603; *Barnes v. Chicopee*, 213 Mass. 1, 4. And the power to decide whether the qualifications have been fulfilled. *Peabody v. School Committee*, 115 Mass. 383, 385.

But apparently the mere mention of an office in the Constitution imposes upon that office the customary qualifications in force at the time of the adoption of the Constitution. *Opinion of Justices*, 107 Mass. 604; *Opinion of Justices*, 150 Mass. 586, 591; *Opinion of Justices*, 165 Mass. 599, 601.

As to giving preferences to certain classes, see under Declaration of Rights, Art. VI.

The Legislature may transfer to an office created by it the powers of a constitutional officer. *Dearborn v. Ames*, 8 Gray, 1, 15.

*"Duties, powers, and limits of the several civil and military officers."* "Where the Constitution creates an office but makes no provision for the period of its term or the method of removal from it, the power of the Legislature to act in the public interests in these respects is well settled." And may even shorten the term during an incumbency. *Taft v. Adams*, 3 Gray, 126, 130; *Opinion of Justices*, 216 Mass. 605, 606, and cases cited.

*"Proportional and reasonable assessments."* As to the distinction in this State between taxes and excises, the court has said: "These two branches of the taxing power are clearly separated. They are different in kind and are expressed in different terms. The power to tax, which includes the power to levy assessments, rates and taxes, relates to persons and property. The power in this respect is not boundless. It is restricted to the extent that it must be proportional and reasonable. These are words of limitation. Capitation and property taxes must be levied in conformity to this limitation. . . . A general property tax, in order to be proportional, must be divided so that the amount to be raised shall be shared by the tax payers according to the taxable real and personal estate of each. A tax for a local improvement must be apportioned according to the benefit accruing to the several estates from the public expenditure. . . . On the other hand, an excise, including thereby both duties and excises, is of a different character. It need not be based on any rule of proportion . . . .

It is a fixed and absolute charge upon the element selected, without reference to the amount of property or the benefit of the taxpayer." Opinion of Justices, 220 Mass. 613, 618-619; *cf.* *Oliver v. Washington Mills*, 11 Allen, 268, 274-275.

It is not necessary that the tax rate be uniform throughout the State. *Northampton v. Hampshire*, 145 Mass. 108, 111; *Institution for Savings v. Boston*, 101 Mass. 575, 586. But merely that in each place the rate should be the same on all classes of property.

The leading cases, interpreting this phrase as prohibiting the assessment of any one class of property at a rate different from any other, are collected and discussed in Opinion of Justices, 195 Mass. 607, 612-613, which opinion declares that an identical rate on intangibles throughout the State, exempting them from local taxation, would be unconstitutional. Compare the reasoning and citations in Opinion of Justices, 220 Mass. 613. An income tax is now constitutional, under Amendment XLIV, adopted in 1915.

Wild or forest lands may now be taxed differently from other property. See Amendment XLI, adopted in 1912.

It would be unconstitutional to impose a different rate on personalty from that on realty; therefore a tax district with a uniform personal property rate equal to the average real property rate of the district would be unconstitutional. Opinion of Justices, 208 Mass. 616.

"While property held for a public use need not be made subject to taxation in order to render taxation of the people proportional and equal, if some property so held is made liable to taxation while other such property is not, no constitutional right of the citizen is infringed." *Fish. Corp. v. Boston*, 224 Mass. 31, 34.

On the constitutionality of the various customary exemptions, see Opinion of Justices, 195 Mass. 607, 608-611. Exempting the increased value of reservoirs due to improvements is unconstitutional. *Cheshire v. County Comrs.*, 118 Mass. 386; *Fall River v. County Comrs.*, 125 Mass. 567.

The fact that a Federal exemption law renders a State tax statute inoperative on certain property does not render the State statute unproportional. *Austin v. Boston*, 14 Allen, 359, 363.

Retrospective taxes may be constitutional. *Institution for Savings v. Boston*, 101 Mass. 575, 591. The expenditure of the tax money need not be proportional. *Lowell v. Oliver*, 8 Allen, 247, 255.

*Betterment assessments.* These may be imposed for betterments already completed before the law is passed. *Hall v. Street Comrs.*, 177 Mass. 434, 439.

The ground for them is special benefits conferred upon those assessed. *Sears v. Street Comrs.*, 173 Mass. 350; *Sayles v. Pittsfield*, 222 Mass. 93. They must be proportionally apportioned, in proportion to the benefit conferred. *Dexter v. Boston*, 176 Mass. 247, 251, and cases cited. And cannot lawfully exceed the value of the benefit conferred. *White v. Gove*, 183 Mass. 333, 335, and cases cited.



The cost of regular street watering may be assessed on the abutters. *Sears v. Boston*, 173 Mass. 71, 77. Likewise the cost of a public park. *Holt v. Somerville*, 127 Mass. 408, 413.

The power to assess for betterments may be delegated. *Masonic Assn. v. Brownell*, 164 Mass. 306, 311. There is no right of jury trial. *Howe v. Cambridge*, 114 Mass. 388, 390.

*"Upon all the inhabitants and persons resident."* Women must pay taxes, even though they are not allowed to vote. *Wheeler v. Wall*, 6 Allen, 558. "Persons resident" is a broader term than "inhabitants," and includes persons temporarily within the State. *Lee v. Boston*, 2 Gray, 484, 490.

Beneficiaries who live here are taxable on their interest in a trust fund held elsewhere under a will proved and allowed elsewhere. *Hunt v. Perry*, 165 Mass. 287, 291. And see *infra*.

Whether the inhabitants of one city should bear all the cost of a certain public improvement therein is not a question of taxation but rather falls under the general powers of the Legislature. *Merrick v. Amherst*, 12 Allen, 500; *Hodgdon v. Haverhill*, 193 Mass. 406, 410-411, and cases cited. See also under Amendment II. But a statute putting on localities the burden of supporting resident alien paupers has been supported under both tax and general powers. *Endicott v. Hopkinton*, 125 Mass. 521. In general, on the apportioning of the cost of improvements among different cities and towns, see under Declaration of Rights, Art. XXX.

*"And estates lying within the said Commonwealth."* Tangible personalty may be taxed where located, regardless of the domicile of the owner. *Leonard v. New Bedford*, 16 Gray, 292; *Manufacturing Co. v. Blackstone*, 13 Gray, 488.

Intangible personalty owned by a resident is taxable here. Such, for instance, as stock of a foreign corporation, which stock is taxable here without deduction for its property held in its home State. *Dwight v. Boston*, 12 Allen, 316; *Hawley v. Malden*, 204 Mass. 138. And a citizen's interest in a foreign partnership. *Bemis v. Boston*, 14 Allen, 366.

"The legislature may treat as realty, for the purposes of taxation, that which is not so, by the common law, and may provide for taxation of personal property in places other than that where the owner resides." *Northampton v. Hampshire*, 145 Mass. 108. Shares in a local corporation may be taxed to a non-resident. *Institution for Savings v. Boston*, 101 Mass. 575.

*"Reasonable excises and duties."* Excise taxes need not be proportional. Opinion of Justices, 195 Mass. 607, 610. An excise is not a property tax, even though measured and estimated by property. *Boston El. v. Commonwealth*, 199 Mass. 96, 98-99. Therefore it may be measured by property which itself could not be constitutionally taxed. *Bellows Falls Co. v. Commonwealth*, 222 Mass. 51. An excise on a savings bank may be measured by the deposits in the bank. *Commonwealth v. Bank*, 5 Allen, 428, 431.

*"Commodities."* With respect to a foreign corporation, the privilege

of doing business here is a commodity. *Atty.-Gen. v. Storage Battery Co.*, 188 Mass. 239, 240; *Atty.-Gen. v. Mining Co.*, 99 Mass. 148, 153.

The right to exist and do business as a corporation is a commodity. *Commonwealth v. Hamilton Co.*, 12 Allen, 298, 300; *Farr Alpaca Co. v. Commonwealth*, 212 Mass. 156. Whether the corporation is domestic or foreign. *S. S. White Co. v. Commonwealth*, 212 Mass. 35; *Marconi Co. v. Commonwealth*, 218 Mass. 558; *Keystone Co. v. Commonwealth*, 212 Mass. 30. This includes a special tax on life insurance companies. *Insurance Co. v. Commonwealth*, 133 Mass. 161.

So is the privilege of determining the disposition of property after one's death and of succeeding to such property. *Crocker v. Shaw*, 174 Mass. 266, 267.

The sale of shares of stock in a corporation is a commodity; *quære*, as to stock in a voluntary association. Opinion of Justices, 196 Mass. 603.

The use of trading stamps is not a commodity. *O'Keefe v. Somerville*, 190 Mass. 110. Nor is the mere ownership of any sort of personal property. Opinion of Justices, 208 Mass. 616. Nor is the existence of a shareholding partnership. *Gleason v. McKay*, 134 Mass. 419, 425.

"*The necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof.*" Purposes of taxation must be public. Opinion of Justices, 186 Mass. 603, 605, and cases cited. See "public uses," under Declaration of Rights, Art. X. The following purposes of taxation have been declared to be public: The erection of electric and gas plants. Opinion of Justices, 150 Mass. 592. Water supply. *Miller v. Fitchburg*, 180 Mass. 32, 37. Financial aid to railroad construction. *Prince v. Crocker*, 166 Mass. 347, 361. Erection of a memorial. *Kingman v. Brockton*, 153 Mass. 255, 256. A public way to a private house. *Higginson v. Nahant*, 11 Allen, 530. Refunding money spent for recruiting. *Freeland v. Hastings*, 10 Allen, 570, 579, 586. Reimbursement of cities for the payment of bounties to stimulate enlistments. *Lowell v. Oliver*, 8 Allen, 247, 257.

The question of public exigency is to be determined by the Legislature; the question of public use, by the courts. *Miller v. Fitchburg*, 180 Mass. 32, 37.

The following have been declared not to be public: The purchase and sale of fuel to the public. Opinion of Justices, 182 Mass. 282. Loans to sufferers from the great Boston fire. *Lowell v. Boston*, 111 Mass. 454. (But see Rep. Atty.-Gen. 1914, p. 168.) Paying bounties long after the war, and in pursuance of no existing obligation. *Mead v. Acton*, 139 Mass. 341, 343-344; Opinion of Justices, 186 Mass. 603. Refunding money paid for substitutes. *Freeland v. Hastings*, 10 Allen, 579, 589. Building a hall for the private use of the G. A. R. *Kingman v. Brockton*, 153 Mass. 255, 257.

"*Valuation of estates.*" A legislative bill providing for such a valuation is not a money bill (see Constitution, Ch. I, Sect. III, Art. VII) and so may originate in the Senate.

**CHAPTER I.****Section II.****SENATE.**

<sup>39</sup> I. [THERE shall be annually elected, by the freeholders and other inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be Counsellors and Senators for the year ensuing their election; to be chosen by the Inhabitants of the districts into which the Commonwealth may from time to time be divided by the General Court for that purpose: And the General Court in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the Commonwealth, the limits of each district, and the number of Counsellors and Senators to be chosen therein; provided that the number of such districts shall never be less than thirteen; and that no district be so large as to intitle the same to choose more than six Senators. —

<sup>40</sup> AND the several counties in this Commonwealth shall, until the General Court shall determine it necessary to alter the said districts, be districts for the choice of Counsellors and Senators, (except that the counties of Dukes County and Nantucket shall form one district for that purpose) and shall elect the following number for Counsellors and Senators, Viz.: —

Suffolk: . . . .	Six	York . . . . .	Two
Essex . . . . .	Six	Dukes County and	} One
Middlesex . . . .	Five	Nantucket	
Hampshire . . . .	Four	Worcester . . . .	Five
Plymouth . . . .	Three	Cumberland . . .	One
Barnstable . . . .	One	Lincoln . . . . .	One
Bristol . . . . .	Three	Berkshire . . . .	Two.]

The present provisions for the election of senators are contained in Amendment XXII, adopted in 1857, superseding Amendment XIII, adopted in 1840. By Amendment XVI, adopted in 1855, councillors are chosen separately, instead of from among the senators.

<sup>41</sup> II. THE Senate shall be the first branch of the legislature; and the Senators shall be chosen in the following manner, viz.

There shall be a meeting on the [first Monday in April,] annually, forever, of the inhabitants of each town in the several counties of this Commonwealth; to be called by the Selectmen, and warned in due course of law, at least Seven days before the [first Monday in April,] for the purpose of electing persons to be Senators and Counsellors; [and at such meetings every male inhabitant of twenty one years of age and upwards, having a freehold estate within the Commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the Senators for the district of which he is an inhabitant.] And to remove all doubts concerning the meaning of the word "inhabitant" in this Constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office, or place within this State, in that town, district or plantation, where he dwelleth, or hath his home. The Selectmen of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such Towns present and qualified to vote for Senators, and shall sort and count them in open town meeting, and in presence of the Town-Clerk; who shall make a fair record, in presence of the Selectmen, and in open town-meeting, of the name of every person voted for, and of the number of votes against his name: and a fair copy of this record shall be attested by the Selectmen and the Town-Clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription, expressing the purport of the Contents thereof, and delivered by the Town-Clerk of such Towns, to the Sheriff of the County in which such town lies, thirty days at least before [the last Wednesday in May] annually; or it shall be delivered into the Secretary's office seventeen days at least before the said [last Wednesday in May:—] And the Sheriff of each County shall deliver all such Certificates by him received, into the Secretary's Office, seventeen Days before the said [last Wednesday in May.]

<sup>42</sup> AND the inhabitants of plantations unincorporated, qualified as this Constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of Government, shall have the same privilege of

voting for Counsellors and Senators in the plantations where they reside, as town inhabitants have in the irrespctive towns; and the plantation meetings for that purpose shall be held annually [on the same first Monday in April], at such place in the plantations, respectively, as the assessors thereof shall direct; which Assessors shall have like authority for notifying the electors, collecting and returning the votes, as the Selectmen and Town Clerks have in their several towns, by this Constitution. And all other persons living in places unincorporated (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for Counsellors and Senators, in the town where they shall be assessed, and be notified of the place of meeting by the Selectmen of the town where they shall be assessed, for that purpose, accordingly. —

Election day changed to second Monday in November by Amendment X, adopted in 1831. Changed to the Tuesday after the first Monday of November by Amendment XV, adopted in 1855.

Voting qualifications changed by Amendment III, and the other amendments thereunder discussed.

As to elections in cities (Amendment II) and towns divided into voting precincts (Amendment XXIX), the Legislature may prescribe the procedure.

Last Wednesday in May changed to first Wednesday in January by Amendment X.

*"Inhabitant."* This means citizen inhabitants, for "as the supreme power rests wholly in the citizens, so the exercise of it, or any branch of it, ought not to be delegated by any but citizens, and only to citizens." Opinion of Justices, 7 Mass. 439, 440. Compare under Amendment XXI.

*"Where he dwelleth."* As to domicile of students, see Opinion of Justices, 5 Met. 587; Putnam v. Johnson, 10 Mass. 488, 500.

*"The selectmen . . . shall preside," etc.* This does not apply to elections in cities (see Amendment II), nor in towns which are divided into precincts (see Amendment XXIX).

The votes cast must be in writing. Nichols v. Election Comrs., 196 Mass. 410, 412. Or by voting machine. Amendment XXXVIII.

<sup>43</sup> III. AND that there may be a due convention of Senators on the [last Wednesday in May] annually, the Governor with five of the Council, for the time being, shall, as soon as may be, examine the returned Copies of such records; and fourteen

days before the said day he shall issue his summons to such persons as shall appear to be chosen by a [majority] of voters, to attend on that day, and take their seats accordingly: provided nevertheless, that for the first year the said returned copies shall be examined by the President and five of the Council of the former Constitution of Government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid. —

Time of meeting changed to first Wednesday in January by Amendment X, in 1831. Plurality vote substituted for majority vote by Amendment XIV, in 1855.

*"Governor with five of the Council."* See under Constitution, Ch. II, Sect. III, Art. I.

“ IV. THE Senate shall be the final judge of the elections, returns and qualifications of their own members, as pointed out in the Constitution; and shall, [on the said last Wednesday in May] annually, determine and declare who are elected by each district to be Senators [by a majority of votes; and in case there shall not appear to be the full number of Senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, Viz. The members of the House of Representatives, and such Senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of Senators wanting, if there be so many voted for; and out of these shall elect by ballot a number of Senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the Commonwealth; and in like manner all vacancies in the Senate, arising by death, removal out of the State, or otherwise, shall be supplied as soon as may be, after such vacancies shall happen. —]

Same changes as in the previous article, which see. Also a substitute method of filling vacancies provided by Amendment XXIV, in 1860.

As to power to punish for contempt, see Constitution, Ch. I, Sect. III, Art. XI.

<sup>45</sup> V. PROVIDED nevertheless, that no person shall be capable of being elected as a Senator, [who is not seized in his own right of a freehold within this Commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and] who has not been an inhabitant of this Commonwealth for the space of five years immediately preceding his election, and at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

Property qualification abolished by Amendment XIII, adopted in 1840. A senator's office becomes vacant upon his removal from the Commonwealth. Amendment XXII, adopted in 1857.

Compare the qualifications of representatives under Amendment XXI.

<sup>46</sup> VI. THE Senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time. —

<sup>47</sup> VII. THE Senate shall choose its own president, appoint its own officers, and determine its own rules of proceedings. —

<sup>48</sup> VIII. THE Senate shall be a court with full authority to hear and determine all impeachments made by the House of Representatives, against any officer or officers of the Commonwealth, for misconduct and mal-administration in their offices. But previous to the trial of every impeachment the members of the Senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Commonwealth: But the party so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment, according to the laws of the land. —

<sup>49</sup> IX. [Not less than sixteen members of the Senate shall constitute a quorum for doing business. —]

By Amendment XXII, adopted in 1857, less than a quorum might adjourn from day to day and compel the attendance of absentees. This provision retained, and the quorum reduced to a majority by Amendment XXXIII, in 1891.

*"Officer."* This was not intended to include all civil officers of every grade, and does not include county commissioners. Opinion of Justices, 167 Mass. 599.

**CHAPTER I.****Section III.****HOUSE OF REPRESENTATIVES.**

<sup>50</sup> I. THERE shall be in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality. —

<sup>51</sup> II. [AND in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty rateable polls may elect one Representative; Every corporate town, containing three hundred and seventy-five rateable polls, may elect two Representatives: Every corporate town containing six hundred rateable polls, may elect three Representatives; and proceeding in that manner, making two hundred and twenty-five rateable polls, the mean increasing number for every additional Representative.

<sup>52</sup> PROVIDED nevertheless, that each town now incorporated, not having one hundred and fifty rateable polls, may elect one Representative; But no place shall hereafter be incorporated with the privilege of electing a Representative, unless there are within the same one hundred & fifty rateable polls. —]

<sup>53</sup> AND the House of Representatives shall have power from time to time to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this Constitution. —

<sup>54</sup> [THE expences of travelling to the General Assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the House, and does not depart without leave. —]

Method of election superseded by Amendments XII and XIII, in 1836 and 1840. These superseded by Amendment XXI, in 1857. Limit on traveling expenses annulled by Amendment XXXV, in 1893.

<sup>55</sup> III. EVERY member of the House of Representatives shall be chosen by written votes; [and, for one year at least next preceeding his election, shall have been an inhabitant of, and



have been seized in his own right of a freehold of the value of one hundred pounds within the town he shall be chosen to represent, or any rateable estate to the value of two hundred pounds; and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid. —]

Voting machines are now permissible under Amendment XXXVIII, adopted in 1911.

Property qualification abolished by Amendment XIII in 1840. A representative must have been an inhabitant of his district for one year preceding his election, and his office becomes vacant upon his removal from the Commonwealth. Amendment XXI, adopted in 1857.

<sup>56</sup> IV. [EVERY male person, being twenty one years of age, and resident in any particular town in this Commonwealth for the space of one year next preceeding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a Representative, or Representatives for the said town. —]

Voting qualifications changed by Amendment III, and the other amendments referred to thereunder.

<sup>57</sup> V. THE members of the House of Representatives shall be chosen annually [in the month of May, ten days at least before the last Wednesday of that month. —]

Time of election changed by Amendment X and again by Amendment XV. It is now the Tuesday after the first Monday in November.

<sup>58</sup> VI. THE House of Representatives shall be the Grand Inquest of this Commonwealth; and all impeachments made by them, shall be heard and tried by the Senate.

See Constitution, Ch. I, Sect. II, Art. VIII, as to the trial.

<sup>59</sup> VII. ALL money-bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills. —

"The exclusive constitutional privilege of the House of Representatives to originate money bills is limited to bills that transfer money or

property from the people to the State, and does not include bills that appropriate money from the Treasury of the Commonwealth to particular uses of the Government, or bestow it upon individuals or corporations." Opinion of Justices, 126 Mass. 557, 601.

This article does not relate to bills for the apportionment of the State tax. Opinion of Justices, 126 Mass. 547.

<sup>60</sup> VIII. THE House of Representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time. —

<sup>61</sup> IX. [Not less than sixty members of the House of Representatives, shall constitute a quorum for doing business.]

Increased to one hundred by Amendment XXI, in 1857, with the proviso that less than a quorum might adjourn from day to day and compel the attendance of absentees. This proviso retained and the number increased to a majority of the members by Amendment XXXIII, in 1891.

<sup>62</sup> X. THE House of Representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the Constitution; shall chuse their own Speaker; appoint their own officers, and settle the rules and orders of proceeding in their own House. They shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the House, by any disorderly, or contemptuous behaviour, in its presence; or who, in the town where the General Court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the House; or who shall assault any of them therefor; or who shall assault, or arrest, any witness, or other person, ordered to attend the House, in his way in going or returning; or who shall rescue any person arrested by the order of the House — And no member of the House of Representatives shall be arrested, or held to bail on mean process, during his going unto, returning from, or his attending the General Assembly. —

*"Judge of the returns."* This renders unconstitutional a statute which provides that certain courts may inquire into corrupt practices of candidates for the Legislature. *Dinan v. Swig*, 223 Mass. 516.

The House is not the final judge of its own powers and privileges in cases

in which the rights and liberties of the subject are concerned. *Burnham v. Morrissey*, 14 Gray, 226, 238.

*"Disorderly, or contemptuous behaviour in its presence."* Refusal to produce books before a committee is such behavior. *Burnham v. Morrissey*, 14 Gray, 226, 240.

See next article as to certain limitations on the power to punish for contempt.

*"No member . . . shall be arrested."* This does not prevent arrest on execution nor on criminal process. *Coffin v. Coffin*, 4 Mass. 1, 29.

<sup>63</sup> XI. THE Senate shall have the same powers in the like cases; and the Governor and Council shall have the same authority to punish in like cases. Provided that no imprisonment on the warrant or order of the Governor, Council, Senate, or House of Representatives, for either of the above-described offences, be for a term exceeding thirty days. —

<sup>64</sup> AND the Senate and House of Representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the Constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best. —

*"Governor and Council."* It appears that they must exercise this power jointly. Answer of Justices, 214 Mass. 602, 604.

*"No imprisonment . . . exceeding thirty days."* Yet as a means of enforcing obedience by a refractory witness, the House can probably imprison for the duration of the session. *Burnham v. Morrissey*, 14 Gray, 226, 241.

*"Or in such other way."* This does not justify a delegation of the power to the courts. *Dinan v. Swig*, 223 Mass. 516, 519.

## CHAPTER II.

### EXECUTIVE POWER.

#### Section I.

##### GOVERNOR.

<sup>65</sup> I. THERE shall be a supreme executive Magistrate, who shall be stiled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be — HIS EXCELLENCY. —

<sup>66</sup> II. THE Governor shall be chosen annually: and no person shall be eligible to this office, unless at the time of his

election, he shall have been an inhabitant of this Commonwealth for seven years next preceeding; [and unless he shall at the same time be seized, in his own right, of a freehold within the Commonwealth of the value of one thousand pounds; and unless he shall declare himself to be of the christian religion. —]

Religious test abolished by Amendment VII, in 1821. Property qualification abolished in 1892 by Amendment XXXIV.

<sup>67</sup> III. THOSE persons who shall be qualified to vote for Senators and Representatives within the several Towns of this Commonwealth, shall, at a meeting to be called for that purpose, on the [first Monday of April] annually, give in their votes for a Governor, to the Selectmen, who shall preside at such meetings; and the Town Clerk, in the presence and with the assistance of the Selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the Town Books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the Selectmen, and transmit the same to the Sheriff of the county, thirty days at least before the [last Wednesday in May]; and the Sheriff shall transmit the same to the Secretarys Office, seventeen days at least before the said [last Wednesday in May]; or the Selectmen may cause returns of the same to be made to the office of the Secretary of the Commonwealth, seventeen days at least before the said day; and the Secretary shall lay the same before the Senate and the House of Representatives, on the [last Wednesday in May] to be by them examined: And in case of an election by a [majority] of all the votes returned, the choice shall be by them declared and published; but if no person shall have a [majority] of votes, the House of Representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for, and make return to the Senate of the two persons so elected; on which the Senate shall proceed, by ballot, to elect one, who shall be declared Governor. —

Elections in cities (Amendment II) and towns with voting precincts (Amendment XXIX) are held under legislative direction.

\* Date of election changed by Amendments X and XV successively. It is now the Tuesday after the first Monday in November.

Votes to be counted the first Wednesday of January by Amendment X, adopted in 1831.

Plurality vote established in 1855 by Amendment XIV. It is possible that vacancies in the office of Governor, due to failure to elect, must now be filled by popular vote. See under Amendment XVI.

The above article requires written votes. *Nichols v. Election Comrs.*, 196 Mass. 410, 412. Although voting machines are now also permissible. Amendment XXXVIII.

<sup>68</sup> IV. THE Governor shall have authority from time to time, at his discretion, to assemble and call together the Counsellors of this Commonwealth for the time being; and the Governor with the said Counsellors, or five of them at least, shall, and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, agreeably to the Constitution and the laws of the land. —

*"The Governor with the said Counsellors."* See under Constitution, Ch. II, Sect. III, Art. I.

<sup>69</sup> V. THE Governor, with advice of Council, shall have full power and authority, during the Session of the General Court, to adjourn or prorogue the same to any time the two houses shall desire; [and to dissolve the same on the day next preceeding the last Wednesday in May;] and, in the recess of the said Court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same: And in case of any infectious distemper prevailing in the place where the said Court is next at any time to convene, or any other cause happening whereby danger may arise to the health or lives of the members from their attendance, he may direct the Session to be held at some other, the most convenient place within the State. —

<sup>70</sup> [AND the Governor shall dissolve the said General Court on the day next preceeding the last Wednesday in May.]

Automatic dissolution on the day preceding the first Wednesday in January is now provided by Amendment X.

*"The Governor, with advice of Council."* This does not require advance advice, merely confirmation. Opinion of Justices, 190 Mass. 616, 618-620.

<sup>71</sup> VI. IN cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the Governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require. —

*"The Governor, with advice of the Council."* This does not require advance advice, merely confirmation. Opinion of Justices, 190 Mass., 616, 618-620.

<sup>72</sup> VII. THE Governor of this Commonwealth, for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer, by all fitting ways, enterprizes, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprize the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion, declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprize by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be intrusted with all these and

other powers, incident to the offices of Captain-General and Commander in Chief, and Admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land, and not otherwise. —

<sup>73</sup> PROVIDED, that the said Governor shall not, at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the Legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the State to which they cannot otherwise conveniently have access.

*"Militia."* This constitutional recognition of the militia as a means of national defense justifies taxing the public for the construction of armories. *Hodgdon v. Haverhill*, 193 Mass. 406, 409.

<sup>74</sup> VIII. THE power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the governor, by and with the advice of Council: But no charter of pardon, granted by the Governor, with advice of the Council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned. —

*"The governor, by and with the advice of Council."* This does not require advance advice, merely confirmation. *Opinion of Justices*, 190 Mass. 616, 620.

The general power of pardoning necessarily contains in it a lesser power of remission and commutation. The pardon may be absolute or conditional. Only a full pardon will wipe out the infamy of the conviction and restore the convict to his civil rights. *Perkins v. Stevens*, 24 Pick. 277, 280.

"This power is not derived from legislation, and it is quite clear that, under any pretence of regulating its exercise, the executive authority could not be deprived of its constitutional rights in relation thereto, but provision may be made by legislation which shall render the exercise of such a power convenient and efficient." *Kennedy's Case*, 135 Mass. 48, 51.

*"Before conviction."* This means verdict; a pardon can be granted before sentence. *Commonwealth v. Lockwood*, 109 Mass. 323.

Apparently the Governor cannot grant a pardon for the purpose of turning over the convict to extradition. Opinion of Justices, 201 Mass. 609, 612.

<sup>75</sup> IX. ALL judicial officers, [the Attorney-General,] the Solicitor-General, [all Sheriffs,] Coroners, [and Registers of probate,] shall be nominated and appointed by the Governor, by and with the advice and Consent of the Council; and every such nomination shall be made by the Governor, and made at least seven days prior to such appointment. —

By Amendment XVII the Attorney-General is now elected.

So are sheriffs and registers of probate, by Amendment XIX. Notaries public are to be appointed like judicial officers by Amendment IV.

*"The Governor, by and with the advice and Consent of the Council."* This does not require advance advice, merely confirmation. Opinion of Justices, 190 Mass. 616, 620.

<sup>76</sup> X. THE Captains and Subalterns of the militia, shall be elected by the written votes of the train band and alarm list of their respective companies, [of twenty-one years of age and upwards:] The Field Officers of regiments shall be elected by the written votes of the Captains and Subalterns of their respective regiments: The Brigadiers shall be elected in like manner, by the Field Officers of their respective brigades; And such Officers, so elected, shall be commissioned by the Governor, who shall determine their rank. —

<sup>77</sup> THE Legislature shall, by standing Laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the Governor, the officers elected. —

<sup>78</sup> THE Major-Generals shall be appointed by the Senate and House of Representatives, each having a negative upon the other; and be commissioned by the Governor. —

<sup>79</sup> AND if the electors of Brigadiers, Field Officers, Captains or Subalterns, shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the Governor, with advice of Council, shall appoint suitable persons to fill such offices. —

<sup>80</sup> [AND no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both Houses to the Governor, or by fair trial in court-martial



pursuant to the laws of the Commonwealth for the time being. —]

<sup>81</sup> THE commanding officers of regiments shall appoint their adjutants and Quarter-Masters; the Brigadiers their Brigade-Majors; and the Major-Generals their aids; and the Governor shall appoint the Adjutant-General. —

<sup>82</sup> THE Governor, with advice of Council, shall appoint all officers of the continental army, whom by the Confederation, of the United States it is provided that this Commonwealth shall appoint, as also all officers of forts and garrisons. —

<sup>83</sup> THE divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this Commonwealth, until the same shall be altered in pursuance of some future law. —

Age limit stricken out by Amendment V, in 1821. By Amendment IV, adopted in 1821, the Legislature may provide how the commissary-general shall be appointed and how all militia officers shall be removed.

Support of the militia is a public purpose. *Hodgdon v. Haverhill*, 193 Mass. 406, 409.

"*Written votes.*" Voting machines are now permissible. Amendment XXXVIII.

"*The Governor shall appoint the Adjutant-general.*" But the Legislature may fix his term of office and determine the method of his removal. Opinion of Justices, 216 Mass. 605, 607.

"*The Governor, with advice of Council.*" This does not require advance advice, merely confirmation. Opinion of Justices, 190 Mass. 616, 618-620.

<sup>84</sup> XI. No monies shall be issued out of the treasury of this Commonwealth, and disposed of (except such sums as may be appropriated for the redemption of bills of Credit or Treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the Governor for the time being, with the advice and Consent of the Council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts & resolves of the General Court.

"*The Governor . . . with the advice and Consent of the Council.*" This does not require advance advice; merely confirmation. Opinion of Justices, 190 Mass. 616, 618-620.

<sup>85</sup> XII. ALL public boards, the Commissary-General, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall once in every three months, officially, and without requisition, and at other times, when required by the Governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small Arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons: And the said commanding officer shall exhibit to the Governor, when required by him, true and exact plans of such forts, and of the land and sea or harbour or harbours adjacent. —

<sup>86</sup> AND the said boards, and all public officers, shall communicate to the Governor, as soon as may be after receiving the same, all letters, dispatches and intelligencies of a public nature, which shall be directed to them respectively. —

<sup>87</sup> XIII. As the public good requires that the Governor should not be under the undue influence of any of the members of the General Court by a dependence on them for his support, that he should in all cases act with freedom for the benefit of the public, that he should not have his attention necessarily diverted from that object to his private concerns — and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate, it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: And it shall be among the first acts of the General Court, after the Commencement of this Constitution, to establish such salary by law accordingly. —

<sup>88</sup> PERMANENT and honorable salaries shall also be established by law for the Justices of the supreme judicial court. —

<sup>89</sup> AND if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time be enlarged as the General Court shall judge proper.

**CHAPTER II.****Section II.****LIEUTENANT GOVERNOR.**

<sup>90</sup> I. THERE shall be annually elected a Lieutenant Governor of the Commonwealth of Massachusetts, whose title shall be, His HONOR and who shall be qualified, in point of [religion, property,] and residence in the Commonwealth, in the same manner with the Governor: And the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a Governor. — The return of the votes for this officer, and the declaration of his election, shall be in the same manner; And if no one person shall be found to have a [majority] of all the votes returned, the vacancy shall be filled by the Senate and House of Representatives, in the same manner as the Governor is to be elected, in case no one person shall have a [majority] of the votes of the people to be Governor. —

Qualifications of religion and property by Amendments VII and XXXIV, respectively.

Plurality election established by Amendment XIV, in 1855.

It is possible that vacancies in the office of Lieutenant-Governor, due to failure to elect, must now be filled by a popular vote. See under Amendment XVI.

<sup>91</sup> II. THE Governor, and in his absence the Lieutenant Governor, shall be President of the Council, but shall have no vote in Council: and the Lieutenant Governor shall always be a member of the Council, except when the chair of the Governor shall be vacant. —

<sup>92</sup> III. WHENEVER the chair of the Governor shall be vacant, by reason of his Death, or absence from the Commonwealth, or otherwise, the Lieutenant Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present. —

Under this article the Lieutenant-Governor might possibly countermand a gubernatorial veto on its way to the Legislature. Opinion of Justices, 135 Mass. 594, 599.

**CHAPTER II.****Section III.****COUNCIL, AND THE MANNER OF SETTLING ELECTIONS BY THE  
LEGISLATURE.**

<sup>93</sup> I. THERE shall be a Council for advising the Governor in the executive part of government, to consist of [nine] persons besides the Lieutenant-Governor, whom the Governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the Governor, with the said Counsellors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the Land. —

Number changed to eight by Amendment XVI, adopted in 1855. On power to punish for contempt, see Constitution, Ch. I, Sect. III, Art. XI.

The words "executive authority" in the United States statute relative to rendition of fugitives from justice do not require the concurrence of the Council in Massachusetts. *Commonwealth v. Hall*, 9 Gray, 262, 267-268.

There are two sorts of duties of the Council: (1) that done by the Governor and Council acting together as an executive board; (2) acts of the Governor which require the approval of the Council. Wherever the Constitution declares that the act is to be done "by and with the advice of council," or similar language, the responsibility rests primarily on the Governor to determine whether any, and what, action is called for. The provision for advice of Council is a requirement for concurrence, before the Governor's affirmative act can become complete and effective. *Opinion of Justices*, 190 Mass. 616, 618-619.

<sup>94</sup> II. [NINE Counsellors shall be annually chosen from among the persons returned for Counsellors and Senators, on the last Wednesday in May, by the joint ballot of the Senators and Representatives assembled in one room: And in case there shall not be found upon the first choice, the whole number of nine persons who will accept a seat in the Council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of Senators left shall constitute the Senate for the year. The Seats of the persons thus

elected from the Senate, and accepting the trust, shall be vacated in the Senate. —]

Changed to the first Wednesday in January by Amendment X, in 1831. Councillors to be chosen, without property qualification, by joint legislative ballot from the people at large by Amendment XIII, adopted in 1840. Number changed to eight, to be chosen from councillor districts, and vacancies to be filled the same as senate vacancies, by Amendment XVI, adopted in 1855. By Amendment XXV, adopted in 1860, vacancies are now filled by a concurrent vote of the Senate and House, or by the Governor with consent of Council if the Legislature is not in session.

<sup>95</sup> III. THE Counsellors, in the civil arrangements of the Commonwealth, shall have rank next after the Lieutenant Governor —

<sup>96</sup> IV. [NOT more than two Counsellors shall be chosen out of any one district of this Commonwealth. —]

Two changed to one by Amendment XIII, in 1840. Election by senatorial district changed to election by councillor district by Amendment XVI, in 1855.

<sup>97</sup> V. THE resolutions and advice of the Council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either House of the Legislature; and any member of the Council may insert his opinion, contrary to the resolution of the majority. —

<sup>98</sup> VI. WHENEVER the office of the Governor and Lieutenant Governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall during such vacancy, have full power and authority to do, and execute, all and every such acts, matters and things, as the Governor or the Lieutenant Governor might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present. —

<sup>99</sup> VII. AND whereas the elections appointed to be made by this Constitution, on the [last Wednesday in May] annually, by the two Houses of the Legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed. And the order of elec-

tions shall be as follows: [The vacancies in the Senate, if any, shall first be filled up;] the Governor and Lieutenant Governor shall then be elected, provided there should be no choice of them by the people: And afterwards the two Houses shall proceed to the election of the Council. —

Date changed to first Wednesday in January by Amendment X, in 1831. Election of the Council taken from the Legislature in 1855 by Amendment XVI, except as to the filling of vacancies. The filling of vacancies in the Senate was transferred to the people by Amendment XXV, in 1860.

## CHAPTER II.

### Section IV.

#### SECRETARY, TREASURER COMMISSARY, &c.

<sup>100</sup> I. [THE Secretary, Treasurer and Receiver General, and the Commissary General, Notaries Public, and] Naval Officers, shall be chosen annually, by joint ballot of the Senators and Representatives in one Room. And that the citizens of this Commonwealth may be assured, from time to time, that the monies remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as Treasurer and Receiver-General more than five years successively. —

The Secretary, Treasurer, Auditor and Attorney-General are now chosen by popular vote, and vacancies filled by the joint ballot of the Legislature if in session, otherwise by the Governor with consent of Council. Amendment XVII. By Amendment IV notaries are appointed like judicial officers, for a term of seven years, and the commissary-general is to be appointed as the Legislature may provide.

<sup>101</sup> II. THE records of the Commonwealth shall be kept in the office of the Secretary, who may appoint his Deputies, for whose conduct he shall be accountable, and he shall attend the Governor and Council, the Senate and House of Representatives, in person, or by his Deputies, as they shall respectively require. —

## CHAPTER III.

## JUDICIARY POWER.

<sup>102</sup> I. THE tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this Constitution: Provided nevertheless, the Governor, with consent of the Council, may remove them upon the address of both Houses of the Legislature. —

*"All judicial officers."* Justices of police courts are judicial officers and therefore hold office during good behavior. They are not justices of the peace. Opinion of Justices, 3 Cush. 584. The Industrial Accident Board and its commissions on arbitration are "courts," although their members are not "judicial officers." Pigeon's Case, 216 Mass. 51, 56. See Amendment XIX, adopted in 1855. It provides for the election of certain court officers.

Removal of judicial officers may be had by address of both houses of the Legislature, even though the grounds are serious enough to justify impeachment. The address need not assign reasons. *Commonwealth v. Harriman*, 134 Mass. 314, 325, 328-329.

<sup>103</sup> II. EACH branch of the Legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the supreme judicial court, upon important questions of law, and upon solemn occasions. —

On the history of such provisions, see Opinion of Justices, 126 Mass. 557, 561-566.

The justices will refuse to express an opinion on questions which have no bearing upon a present duty awaiting performance by the requesting body. Answer of Justices, 217 Mass. 607, 611. Or which relate to an existing statute rather than a pending bill. Answer of Justices, 148 Mass. 623, 625; Answer of Justices, 150 Mass. 598, 600-601; Opinion of Justices, 208 Mass. 614, 615. This applies, however, only to the Legislature. Thus the justices have honored a request by the Governor and Council for an opinion relative to the correct construction of an existing law under which they have duties to perform. Opinion of Justices, 186 Mass. 603.

The opinion will go only to the extent necessary to aid in the performance of official duties in regard to a matter then pending. Opinion of Justices, 186 Mass. 603, 608.

The question need not be one "such as might come before them in their judicial capacity." Opinion of Justices, 126 Mass. 557, 566.

The justices will not express an opinion as to the "adequacy" of existing constitutional provisions, that being a legislative question. Opinion of Justices, 214 Mass. 599, 602.

The Legislature cannot secure the assistance of the judiciary in determining questions of fact. *Dinan v. Swig*, 223 Mass. 516, 519.

It is to be doubted whether the Legislature can submit a complicated series of laws and ask the justices what questions can be raised as to the validity of each clause thereof. Opinion of Justices, 145 Mass. 587, 592.

The Governor alone cannot require an opinion, for the words of the article are "governor and council," not "governor or council." Answer of Justices, 214 Mass. 602.

An opinion given under this article "being purely advisory is not binding as an authority." *Woods v. Woburn*, 220 Mass. 416, 418; *Young v. Duncan*, 218 Mass. 346, 351, and cases cited.

<sup>104</sup> III. IN order that the people may not suffer from the long continuance in place of any Justice of the Peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of Justices of the Peace shall expire and become void, in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another Person appointed, as shall most conduce to the well-being of the Commonwealth. —

By Amendment XXXVII, adopted in 1907, the Governor and Council may remove justices of the peace.

Justices of police courts are not justices of the peace within the meaning of this article, and so have life tenure under Article I. Opinion of Justices, 3 Cush. 584.

Women cannot be justices of the peace. Opinion of Justices, 107 Mass. 604. Compare Constitution, Ch. I, Sect. I, Art. IV, "civil officers." Also Amendment IV.

<sup>105</sup> IV. THE Judges of probate of Wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require. And the Legislature shall from time to time, hereafter appoint such times and places; until which appointments, the said Courts shall be holden at the times and places which the respective Judges shall direct. —



<sup>106</sup> V. ALL causes of marriage, divorce, and alimony, and all appeals from the Judges of probate shall be heard and determined by the Governor and Council, until the Legislature shall, by law, make other provision. —

The power of the Legislature is limited to making provision by general law. It cannot itself grant a divorce decree in a particular case. Nor alter the effect of a class of decrees already granted. *Sparhawk v. Sparhawk*, 116 Mass. 315, 318. Nor grant permission to marry again in a specific case. *White v. White*, 105 Mass. 325.

#### CHAPTER IV.

##### DELEGATES TO CONGRESS.

<sup>107</sup> THE Delegates of this Commonwealth to the Congress of the United States, shall, some time in the month of June, annually, be elected by the joint ballot of the Senate and House of Representatives, assembled together in one room; to serve in Congress for one year, to commence on the first Monday in November then next ensuing. They shall have commissions under the Hand of the Governor, and the great Seal of the Commonwealth; but may be recalled at any time within the year, and others chosen and Commissioned, in the same manner, in their stead. —

Superseded by the United States Constitution, Art. I, Sect. II, which provides that representatives in Congress shall be chosen by the people of the several States.

#### CHAPTER V.

##### THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE &c.

##### Section I.

##### THE UNIVERSITY.

<sup>108</sup> I. WHEREAS our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences, which qualified them for

public employments, both in Church and State: And whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the christian religion, and the great benefit of this and the other United States of America — It is declared, That the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy: And the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever. —

<sup>109</sup> II. AND whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the president and Fellows of Harvard College, or to the said College, by some other discription, under several charters, successively: IT IS DECLARED: That all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard-College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors. —

<sup>110</sup> III. AND whereas, by an Act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred & forty-two, the Governor and Deputy-Governor, for the time being, and all the magistrates of that jurisdiction, were, with the President, and a number of the clergy in the said act described, constituted the overseers of Harvard College: And it being necessary, in this new Constitution of Government to ascertain who shall be deemed successors to the said Governor, Deputy-Governor and magistrates: IT IS DECLARED, that the Governor, Lieutenant Governor, Council and Senate of this Commonwealth, are, and shall be deemed, their successors, who with the President of Harvard College, for the time being, together with the Ministers of the congregational

churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the Overseers of Harvard College; PROVIDED, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of Letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay. —

## CHAPTER V.

### Section II.

#### THE ENCOURAGEMENT OF LITERATURE &c.

<sup>111</sup> WISDOM, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and Magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humour, and all social affections, and generous sentiments among the people. —

“As taxation of the people may be imposed for these objects, property used for literary, educational, benevolent, charitable or scientific purposes may well be exempted from taxation.” Opinion of Justices, 195 Mass. 607, 609.

Moneys raised for public schools cannot be expended on private or sectarian schools. Amendment XVIII.

The Legislature may require street railway companies to carry school children without profit, but any loss must be borne not by the companies but by taxation. *Commonwealth v. Street Railway*, 187 Mass. 436, 439.

"*Manufactures*." This justifies the appropriation of public money to aid a privately managed textile school. *Hanscom v. Lowell*, 165 Mass. 419.

## CHAPTER VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES; PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, &c. —

<sup>112</sup> I. ANY person chosen Governor, Lieutenant Governor, Counsellor, Senator, or Representative, and accepting the trust, [shall before he proceed to execute the duties of his place or Office, make and subscribe the following declaration, viz. —

<sup>113</sup> I, A. B, do declare, that I believe the christian religion, and have a firm persuasion of its truth; and that I am seized and possessed, in my own right, of the property required by the Constitution as one qualification for the office or place to which I am elected. —

<sup>114</sup> AND the Governor, Lieutenant Governor, and Counsellors, shall make and subscribe the said declaration, in the presence of the two Houses of Assembly; and the Senators and Representatives, first elected under this Constitution, before the President and five of the Council of the former Constitution; and forever afterwards before the Governor and Council for the time being. —

<sup>115</sup> AND every person chosen to either of the places or Offices aforesaid,] as also any person appointed or commissioned to any judicial, executive, military, or other office under the Government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, Viz. —

<sup>116</sup> ["I, A, B, do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign and independent State; and I do swear, that I will bear true faith and allegiance

to the said Commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever: And that I do renounce and abjure all allegiance, subjection and obedience to the King, Queen, or Government of Great Britain, (as the case may be) and every other foreign Power whatsoever: And that no foreign Prince, Person, Prelate, State or Potentate, hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing or other power, in any matter, civil, ecclesiastical or spiritual, within this Commonwealth, except the authority and power which is or may be vested by their constituents in the Congress of the United States: And I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this Oath, declaration, or affirmation: and that I do make this acknowledgement, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. — So HELP ME, GOD.”]

<sup>117</sup> “I, A, B, do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as : according to the best of my abilities and understanding, agreeably, to the rules and regulations of the Constitution, and the laws of this Commonwealth — So HELP ME, GOD.”

<sup>118</sup> PROVIDED always, that when any person chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oath[s,] he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words [“I do swear,” “and abjure,” “oath or,” “and abjuration,” in the first oath; and in the second oath, the words] “swear and,” and [in each of them] the words “So help me God;” subjoining instead thereof, “This I do under the pains and penalties of perjury.”

<sup>119</sup> AND the said oaths or affirmations shall be taken and subscribed by the Governor, Lieutenant-Governor, and Counsellors, before the President of the Senate, in the presence of the two Houses of Assembly; and by the Senators and Rep-

representatives first elected under this Constitution, before the President and five of the Council of the former Constitution; and forever afterwards before the Governor and Council for the time being: and by the residue of the officers aforesaid, before such persons and in such manner as from time to time shall be prescribed by the Legislature. —

In 1821 a new oath of allegiance was substituted by Amendment VI, and all other oaths, declarations and subscriptions were abolished by Amendment VII.

<sup>120</sup> II. No Governor, Lieutenant Governor, or Judge of the supreme judicial court, shall hold any other office or place, under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the Judges of the said court may hold the offices of Justices of the Peace through the State; nor shall they hold any other place or office, or receive any pension or salary from any other State or Government or Power whatever. —

<sup>121</sup> No person shall be capable of holding or exercising at the same time, within this State more than one of the following offices, Viz. — Judge of Probate — Sheriff — Register of Probate — or Register of Deeds: AND never more than any two offices which are to be held by appointment of the Governor, or the Governor and Council, or the Senate, or the House of Representatives, or by the election of the people of the State at large, or of the people of any county, military offices and the offices of Justices of the peace excepted, shall be held by one person. —

<sup>122</sup> No person holding the office of Judge of the Supreme Judicial Court — Secretary — Attorney-General — Solicitor-General — Treasurer or Receiver General — Judge of Probate — Commissary General — [President, Professor, or Instructor of Harvard College] — Sheriff — Clerk of the House of Representatives — Register of Probate — Register of Deeds — Clerk of the supreme Judicial Court — Clerk of the Inferior Court of Common Pleas — or Officer of the Customs, including in this description Naval Officers — shall at the same time have a seat in the Senate or House of Representatives; but their being chosen or appointed to, and accepting the same, shall operate

as a resignation of their Seat in the Senate or House of Representatives; and the place so vacated shall be filled up. —

<sup>123</sup> AND the same rule shall take place in case any Judge of the said Supreme Judicial Court, or Judge of Probate, shall accept a seat in Council; or any Counsellor shall accept of either of those offices or places.

<sup>124</sup> AND no person shall ever be admitted to hold a seat in the Legislature, or any office of trust or importance under the Government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption in obtaining an election or appointment.

See additional provisions along the same lines in Amendment VIII, adopted in 1821, and decisions thereunder. Officers of Harvard College excepted by Amendment XXVII, in 1877.

Whether the holder of a certain judicial office vacates that office by accepting a seat in the House of Representatives is a judicial and not a legislative question. Answer of Justices, 122 Mass. 600, 603.

One who holds a commission prohibited by this article is a *de facto* officer. His acts cannot be called in question in a suit based on them; *viz.*, cannot be attacked collaterally. *Fitchburg RR. v. Grand Junction RR.*, 1 Allen, 552, 557.

<sup>125</sup> III. [IN all cases where sums of money are mentioned in this Constitution, the value thereof shall be computed in silver, at six shillings and eight pence per ounce; And it shall be in the power of the Legislature from time to time to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the Commonwealth shall require.]

All parts of the Constitution where sums of money were mentioned have been annulled by Amendments III, XIII and XXXIV.

This probably also destroys the above provision permitting the increase of qualifications.

<sup>126</sup> IV. ALL commissions shall be in the name of the Commonwealth of Massachusetts, signed by the Governor and attested by the Secretary or his Deputy, and have the great seal of the Commonwealth affixed thereto. —

<sup>127</sup> V. ALL writs issuing out of the Clerk's office in any of the courts of law, shall be in the name of the Commonwealth

of Massachusetts: They shall be under the seal of the court from whence they issue: They shall bear test of the first Justice of the Court to which they shall be returnable, who is not a party, and be signed by the clerk of such court. —

A rule to show cause is not a writ. *Taylor v. Henry*, 2 Pick. 397, 398. Nor is an order of notice in disbarment proceedings. *Re Allin*, 224 Mass. 9, 11.

But a writ will not, after a joinder in demurrer, be quashed for a mere error in the teste. *Ripley v. Warren*, 2 Pick. 592. Nor, after a plea to the merits, because not under the seal of the court. *Foot v. Knowles*, 4 Met. 386, 391. And a writ signed by a clerk who has died may be amended. *Austin v. Insurance Co.*, 108 Mass. 338.

The signature of an assistant clerk, duly appointed under legislative authority, is sufficient. *Jacobs v. Measures*, 13 Gray, 74.

<sup>128</sup> VI. ALL the laws which have heretofore been adopted, used and approved in the Province, Colony, or State of Massachusetts Bay, and usually practiced on in the courts of law, shall still remain and be in full force, until altered or repealed by the Legislature; such parts only excepted as are repugnant to the rights and liberties contained in this Constitution. —

*“Usually practiced on.”* This adopts the common law of England and such statutes in amendment of the common law as were enacted before the emigration of our ancestors, so far as applicable to our condition and form of government. *Commonwealth v. Leach*, 1 Mass. 59; *Commonwealth v. Knowlton*, 2 Mass. 530, 534; *Going v. Emery*, 16 Pick. 107, 116–117; *Sackett v. Sackett*, 8 Pick. 309, 316.

It is not necessary to show that any particular rule of the common law had ever been *adjudicated* before the Revolution. “We rely on usage and tradition, and the well known repositories of legal learning, works of approved authority, to learn what are the rules of the common law.” *Commonwealth v. Churchill*, 2 Met. 118, 124.

Example of laws falling under this article: The common law power of courts to change place of trial so as to secure an impartial trial. *Crocker v. Justices*, 208 Mass. 162, 178. Example of laws excluded: Province statute permitting the builder of a partition wall to build half on the land of his neighbor. *Wilkins v. Jewett*, 139 Mass. 29.

<sup>129</sup> VII. THE privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and



pressing occasions, and for a limited time not exceeding twelve months. —

As this article relates merely to the suspension of the writ of *habeas corpus*, and not to its nature, none of the many cases on the nature of the writ and proceedings thereunder are given.

<sup>130</sup> VIII. THE enacting stile, in making and passing all acts, statutes and laws, shall be — “Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same” —

<sup>131</sup> IX. To the end there may be no failure of Justice, or danger arise to the Commonwealth from a change of the Form of Government — all officers, civil and military, holding commissions under the Government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this Constitution shall take effect, shall have, hold, use, exercise and enjoy, all the powers and authority to them granted or committed, until other persons shall be appointed in their stead: And all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority; until the General Court and the supreme and executive officers under this Constitution are designated and invested with their respective trusts, powers and authority. —

<sup>132</sup> X. IN order the more effectually to adhere to the principles of the Constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary — The General Court which shall be in the year of our Lord one Thousand Seven Hundred & ninety-five, shall issue precepts to the Selectmen of the several towns, and to the Assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the Constitution, in order to amendments.

<sup>133</sup> AND if it shall appear by the returns made, that two thirds of the qualified voters throughout the State, who shall assemble and vote in consequence of the said precepts, are in favour of such revision or amendment, the General Court shall issue precepts, or direct them to be issued from the Secretary's Office to the several towns to elect delegates to meet in Convention for the purpose aforesaid. —

<sup>134</sup> THE said delegates to be chosen in the same manner and proportion as their Representatives in the second branch of the Legislature are by this Constitution to be chosen. —

This article expired by its own limitation in 1795. The present legislative method of amendment was established by Amendment IX, in 1821.

<sup>135</sup> XI. THIS Form of Government shall be enrolled on parchment, and deposited in the Secretary's office, and be a part of the laws of the land — and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

<sup>136</sup> THE foregoing is the Constitution or Frame of Government for the Commonwealth of Massachusetts, as agreed upon by the Delegates of the People of the said Commonwealth, submitted to the Revision of their Constituents, and by them approved; as appeared by the Returns from the several Towns & Plantations received & examined in Convention, previous to its Dissolution on the sixteenth Day of June A D one thousand seven hundred & eighty.

JAMES BOWDOIN,  
*President of ye Convention.*

SAMUEL BARRETT, *Secretary.*

#### ARTICLES OF AMENDMENT.

<sup>137</sup> ARTICLES of AMENDMENT of the CONSTITUTION submitted (by Delegates in Convention assembled November 15, 1820) to the people; and by them ratified and adopted, April 9, 1821. Certified by a Committee of the Convention May 24, 1821, and presented to the General Court May 30, 1821. —

<sup>138</sup> ARTICLE 1. If any bill or resolve shall be objected to, and not approved by the Governor; and if the General Court shall adjourn within five days after the same shall have been laid before the Governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution, such bill or resolve shall not become a law, nor have force as such.

This amendment restates the law as already interpreted. Opinion of the Justices, 3 Mass. 567, which opinion was based on Constitution, Ch. I, Sect. I, Art. II.

<sup>139</sup> ART. 2. The General Court shall have full power & authority to erect and constitute municipal or city governments, in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such powers, privileges & immunities, not repugnant to the constitution as the General Court shall deem necessary or expedient for the regulation & government thereof & to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise for the election of officers under the constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants, nor unless it be with the consent, and on the application of a majority of the inhabitants of such town, present & voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And Provided also, that all by-laws made by such municipal or city government shall be subject, at all times to be annulled by the General Court.

This amendment supersedes to some extent the provision for voting by towns in Constitution, Ch. I, Sect. I, Art. VII.

The Legislature does not charter or incorporate the city. The towns are already corporations. "This article shows throughout that the establishment of a city is deemed to be an act done by the Legislature for the convenient and efficient administration of local government, and not for the purpose of conferring any peculiar benefit on the municipality or its inhabitants." *Hill v. Boston*, 122 Mass. 344, 354.

Under the Legislature's general powers (Constitution, Ch. I, Sect. I, Art. IV) it can divide counties, towns and school districts, alter their boundary lines, increase, diminish or abolish their powers. Thus with

respect to cities, which are not creatures of the Constitution, it may amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, or abolish them altogether. *Commonwealth v. Plaisted*, 148 Mass. 375, 386; *Warren v. Charlestown*, 2 Gray, 84, 104; *Coolidge v. Brookline*, 114 Mass. 592, 597. To the same effect on uniting two cities. *Stone v. Charlestown*, 114 Mass. 214, 220.

It may do the same with respect to fire districts. *Weymouth, etc., District v. County Comrs.*, 108 Mass. 142, 144-145.

To the same effect as to towns and counties, with the proviso that such change of boundaries cannot change senatorial and representative districts between censuses. *Opinion of Justices*, 6 Cush. 575, 579-582. Yet the Legislature cannot by a general statute empower whatever towns of twelve thousand inhabitants or more adopt the provisions of the act to become cities. *Larcom v. Olin*, 160 Mass. 102, 109. But the Legislature may establish several models of government and provide that one or another of these may become operative by its acceptance by the voters of any city already established. *Cunningham v. Mayor of Cambridge*, 222 Mass. 574, 577.

*"No such government . . . in any town not containing twelve thousand inhabitants,"* etc. This does not prohibit annexing, without its consent, a town of less than twelve thousand to a city already existing. *Chandler v. Boston*, 112 Mass. 200, 204.

<sup>140</sup> ART. 3. Every male citizen of twenty one years of age and upwards, excepting paupers and persons under guardianship, who shall have resided within the Commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of Governor, Lieutenant Governor, Senators or Representatives, [and who shall have paid, by himself or his parent, master or guardian, any State or County tax, which shall, within two years next preceding such election, have been assessed upon him in any town or district of this Commonwealth; and also, every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above mentioned,] shall have a right to vote in such election of Governor, Lieutenant Governor, Senators and Representatives; and no other person shall be entitled to vote in such elections.

This amendment supersedes the qualifications set forth in Constitution, Ch. I, Sect. II, Art. II; Ch. I, Sect. III, Art. IV; Ch. II, Sect. I, Art. III; and Ch. II, Sect. II, Art. I.

Ability to read and write was added by Amendment XX, in 1857. In

1881, by Amendment XXVIII, United States soldiers and sailors were exempted from property and tax disqualifications.

In 1890, by Amendment XXX, persons removing from one part of the State to another were permitted to vote at the old residence for six months.

In 1891, by Amendment XXXII, the tax qualifications were abolished, and in 1912, by Amendment XL, there was added a new disqualification, namely, conviction of corrupt practices at elections.

See also Amendment XXIII, adopted in 1859 and repealed in 1863, for certain discriminations against newly naturalized citizens.

The qualifications set forth in this and the other above-referred-to amendments are expressly applicable only to Governor, Lieutenant-Governor, Senators and Representatives. By Amendment XVI these qualifications are expressly extended to Councillors. By Amendments XVII these qualifications are extended to the Secretary, Treasurer, Auditor and Attorney-General. The words "qualified voters" in Amendment IX, and the word "voters" in Amendment XLII, may extend these qualifications to constitutional amendments and statutes submitted to the people by the Legislature. The Supreme Court has recently, however, extended them to all *State* affairs, as distinguished from the election of local or subordinate boards. Opinion of Justices, 1917 Senate Doc. 512. See under Declaration of Rights, Art. IX.

The Constitution contemplates that the Legislature will make reasonable rules for the exercise of the voting privilege. It is not unreasonable to require registration of voters, and to require it at a time sufficiently previous to election so that proper preparations can be made therefor. *Capen v. Foster*, 12 Pick. 485, 489, 492; *Kinneen v. Wells*, 144 Mass. 497, 500.

But it is unconstitutional to provide that no person can register until thirty days after he has been naturalized, for this postpones his voting right unreasonably. *Kinneen v. Wells*, 144 Mass. 497, 498. Compare Amendment XXIII, repealed by Amendment XXVI.

"*Every male citizen . . . who shall have resided.*" He need not have been a citizen during the whole of the residence period; it is enough that he is a citizen when he votes. Opinion of Justices, 122 Mass. 594, 597. A bald intent to retain a domicile, after moving oneself and one's family to another State and retaining here only a place of business, is not sufficient to entitle one to vote. *Holmes v. Greene*, 7 Gray, 299. As to domicile of students, see Opinion of Justices, 5 Met. 587. On domicile in general, see also *Williams v. Whiting*, 11 Mass. 424; *Lincoln v. Hapgood*, 11 Mass. 350.

"*Excepting paupers.*" This means "persons receiving aid and assistance from the public under the provisions made by law for the support and maintenance of the poor." Opinion of Justices, 11 Pick. 538, 540; Opinion of Justices, 124 Mass. 596, 597. This disqualification is not required to have ceased for any definite period of time in order to entitle a man, otherwise qualified, to vote. Opinion of Justices, 124 Mass. 596, 598.

<sup>141</sup> ART. 4. Notaries Public shall be appointed by the Governor in the same manner as Judicial officers are appointed, & shall hold their offices during seven years, unless sooner removed by the Governor with the consent of the Council, [upon the address of both Houses of the Legislature].

<sup>142</sup> [In case the office of Secretary or Treasurer of the Commonwealth shall become vacant from any cause during the recess of the General Court, the Governor, with the advice and consent of the Council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the General Court.]

<sup>143</sup> Whenever the exigencies of the Commonwealth shall require the appointment of a Commissary General, he shall be nominated, appointed and commissioned in such manner as the Legislature may, by law, prescribe.

<sup>144</sup> All officers commissioned to command in the militia may be removed from office in such manner as the Legislature may, by law, prescribe. —

The above provisions for appointment of notaries and commissary general supersedes the provision for their election by the Legislature, under Constitution, Ch. II, Sect. IV, Art. I. By amendment XXXVII, adopted in 1907, notaries may now be removed by the Governor and Council without action by the Legislature.

There was originally no provision for the filling of vacancies in the office of Secretary or Treasurer. The above provision was superseded in 1855 by Amendment XVII.

The provision for removal of militia officers supersedes the provision in Constitution, Ch. II, Sect. I, Art. X, for removal by court-martial.

"The governor, with the consent of the council." This does not require advance consultation, merely confirmation. Opinion of Justices, 190 Mass. 616, 618-620.

"*Notaries public.*" The Governor cannot appoint a woman as a notary. Opinion of Justices, 150 Mass. 586, 592. And the Legislature cannot empower him to. Opinion of Justices, 165 Mass. 599, 600. Compare Constitution, Ch. I, Sect. I, Art. IV, "civil officers;" also Ch. III, Art. III.

"*All officers commissioned,*" etc. The Legislature may shorten the tenure so as to oust an incumbent. Opinion of Justices, 216 Mass. 605, 606.

<sup>145</sup> ART. 5. In the elections of Captains and Subalterns of the militia, all the members of their respective companies, as

well those under as those above the age of twenty one years, shall have a right to vote. —

Prior to the adoption of this amendment there had been a twenty-one-year age qualification in Constitution, Ch. II, Sect. I, Art. X.

See under Constitution, Ch. II, Sect. I, Arts. X and XI, on the public status of the militia.

<sup>146</sup> ART. 6. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military under the government of this Commonwealth, before he shall enter on the duties of his office, to wit;

<sup>147</sup> "I A. B. do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So **HELP ME, GOD.**"

<sup>148</sup> Provided, that when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear" and inserting instead thereof the word "affirm;" and omitting the words "So **HELP ME GOD,**" and subjoining, instead thereof, the words "this I do under the pains and penalties of perjury." —

This amendment is a substitute for the oath of allegiance prescribed in Constitution, Ch. VI, Art. I.

<sup>149</sup> ART. 7. No oath, declaration or subscription, excepting the oath prescribed in the preceding article and the oath of office, shall be required of the Governor, Lieutenant Governor, Counsellors, Senators or Representatives, to qualify them to perform the duties of their respective offices. —

This amendment abolishes the religious test for Governor (Constitution, Ch. II, Sect. I, Art. II), and for Lieutenant-Governor (Constitution, Ch. II, Sect. II, Art. I), and the property oath (Constitution, Ch. VI, Art. I).

<sup>150</sup> ART. 8. No Judge of any Court of this Commonwealth (except the Court of Sessions) and no person holding any office under the authority of the United States (Postmasters excepted) shall, at the same time, hold the office of Governor, Lieutenant Governor, or Counsellor, or have a seat in the Senate or House

of Representatives of this Commonwealth; and no Judge of any Court in this Commonwealth (except the Court of Sessions) nor the Attorney General, Solicitor General, County Attorney, Clerk of any Court, Sheriff, Treasurer and Receiver General, Register of Probate, nor Register of Deeds, shall continue to hold his said office after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust by any of the officers aforesaid shall be deemed and taken to be a resignation of his said office; and Judges of the Courts of Common Pleas shall hold no other office under the government of this Commonwealth, the office of Justice of the Peace and militia offices excepted.

Compare Constitution, Ch. VI, Art. II.

The holding of the first office does not disqualify the holder from accepting the second, but his acceptance of the second vacates the first. *Commonwealth v. Hawkes*, 123 Mass. 525, 531, 532.

"*Judge of any court.*" A special justice of a police court is such a judge. *Commonwealth v. Hawkes*, 123 Mass. 525, 529.

A judge accepting a seat in the House of Representatives may be removed from his judicial office by *quo warranto*. *Commonwealth v. Hawkes*, 123 Mass. 525, 529.

But his act, while judge *de facto*, cannot be disputed in a proceeding to which he is not a party. *Sheehan's Case*, 122 Mass. 445; *Opinion of Justices*, 122 Mass. 600, 604; *Commonwealth v. Taber*, 123 Mass. 253.

<sup>151</sup> ART. 9. If at any time hereafter any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the Senators and two thirds of the members of the House of Representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the Senators and two thirds of the members of the House of Representatives present and voting thereon; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people: and if they shall be approved and ratified by a majority of the quali-



fied voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

ISAAC PARKER

*President of the Convention.*

Attest

BENJAMIN POLLARD,

*Secretary.*

From 1795 (see Constitution, Ch. VI, Art. X) until the adoption of this amendment the Constitution provided no method whereby it could be amended. "Under and pursuant to the existing constitution there is no authority given by any reasonable construction or necessary implication, by which any specific and particular amendment or amendments of the constitution can be made in any other manner than that prescribed in the ninth article of the amendments." Opinion of Justices, 6 Cush. 573, 574.

"The court do not understand, that it was the intention of the house of representatives, to request their opinion upon the natural right of the people, in cases of great emergency, or upon the obvious failure of their existing constitution to accomplish the objects for which it was designed, to provide for the amendment or alteration of their fundamental laws." Opinion of Justices, 6 Cush. 573, 574. Constitutional Conventions have been held in 1820, 1853 and 1917.

#### TENTH ARTICLE OF AMENDMENT.

<sup>152</sup> The political year shall begin on the First Wednesday of January instead of the last Wednesday of May, and the General Court shall assemble every year, on the said first Wednesday of January, and shall proceed at that Session to make all the elections, and do all the other acts which are by the Constitution required to be made and done at the Session which has heretofore commenced on the last Wednesday of May. And the General Court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the Governor. The Governor, Lieutenant Governor and Counsellors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

<sup>153</sup> [The meeting for the choice of Governor, Lieutenant Governor, Senators and Representatives shall be held on the second Monday of November in every year; but meetings may be adjourned if necessary, for the choice of Representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of Representatives, such meetings shall be held on the fourth Monday of the same month of November.]

<sup>154</sup> All the other provisions of the Constitution, respecting the elections and proceedings of the members of the General Court, or of any other officers or persons whatever, that have reference to the last Wednesday of May, as the commencement of the political year, shall be so far altered as to have like reference to the first Wednesday of January.

<sup>155</sup> This article shall go into operation on the first day of October next following the day when the same shall be duly ratified and adopted as an amendment of the Constitution;— and the Governor, Lieutenant Governor, Counsellors, Senators, Representatives and all other State Officers, who are annually chosen, and who shall be chosen for the current year when the same shall go into operation, shall hold their respective offices until the first Wednesday of January then next following, and until others are chosen and qualified in their stead, and no longer— And the first election of the Governor, Lieutenant Governor, Senators and Representatives to be had in virtue of this article shall be had conformably thereunto, in the month of November following the day on which the same shall be in force, and go into operation pursuant to the foregoing provision.

<sup>156</sup> All the provisions of the existing Constitution inconsistent with the provisions herein contained are hereby wholly annulled.

This amendment was adopted in 1831. Before this amendment the Legislature was accustomed to meet in May (as required), perform all the duties required to be done at that time, and then prorogue from time to time until January, when the real business session was held. This amendment made this practice unnecessary.

The change of the political year affects many parts of the original Constitution. Election day was again changed in 1855 by Amendment XV.

## ELEVENTH ARTICLE OF AMENDMENT.

<sup>157</sup> "Instead of the Third Article of the Bill of Rights, the following Modification and Amendment thereof is substituted.

<sup>158</sup> As the public worship of God and instructions in piety, religion and morality, promote the happiness and prosperity of a people and the security of a Republican Government;— Therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the Clerk of such Society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made, or entered into by such society:— And all religious sects and denominations demeaning themselves peaceably and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

This amendment was adopted in 1833. The legislative authority to provide for the observance of Sunday is derived from the general authority to regulate the business of the community and to provide for its moral and physical welfare. A Sunday closing law imposes upon no one any religious ceremony or attendance upon any form of worship, and hence is not unconstitutional. *Commonwealth v. Has*, 122 Mass. 40, 42.

This article prohibits the establishment of a State religion. *Opinion of Justices*, 214 Mass. 599, 601.

See also Amendment XVIII, which is the so-called "sectarian amendment."

## TWELFTH ARTICLE OF AMENDMENT.

<sup>159</sup> [In order to provide for a representation of the citizens of this Commonwealth, founded upon the principles of equality a census of the ratable polls, in each city, town and district of the Commonwealth, on the first day of May, shall be taken

and returned into the Secretary's Office, in such manner as the Legislature shall provide, within the month of May, in the year of our Lord one thousand eight hundred and thirty-seven, and in every tenth year thereafter, in the month of May, in manner aforesaid, and each town or city having three hundred ratable polls at the last preceding decennial census of polls may elect one Representative, and for every four hundred and fifty ratable polls in addition to the first three hundred, one Representative more. Any town having less than three hundred ratable polls shall be represented thus; the whole number of ratable polls, at the last preceding decennial census of polls, shall be multiplied by ten, and the product divided by three hundred, and such town may elect one Representative as many years within ten years, as three hundred is contained in the product aforesaid. Any city or town having ratable polls enough to elect one or more Representatives, with any number of polls beyond the necessary number, may be represented as to that surplus number by multiplying such surplus number by ten and dividing the product by four hundred and fifty; and such city or town may elect one additional Representative as many years within the ten years as four hundred and fifty is contained in the product aforesaid. Any two or more of the several towns and districts may, by consent of a majority of the legal voters present at a legal meeting in each of said towns and districts respectively called for that purpose, and held previous to the first day of July in the year in which the decennial census of polls shall be taken, form themselves into a representative district, to continue until the next decennial census of polls, for the election of a Representative or Representatives, and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of ratable polls. The Governor and Council shall ascertain and determine within the months of July and August, in the year of our Lord one thousand eight hundred and thirty-seven, according to the foregoing principles, the number of Representatives, which each city, town and Representative District is entitled to elect, and the number of years within the period of ten years then next ensuing, that each city, town and Representative District may elect an addi-

tional Representative, and where any town has not a sufficient number of polls to elect a Representative each year then how many years within the ten years, such town may elect a Representative, and the same shall be done once in ten years thereafter by the Governor and Council, and the number of ratable polls in each decennial census of polls, shall determine the number of Representatives, which each city, town and Representative District may elect as aforesaid, and when the number of Representatives to be elected by each city, town or Representative District is ascertained and determined as aforesaid, the Governor shall cause the same to be published forthwith for the information of the people and that number shall remain fixed and unalterable for the period of ten years. All the provisions of the existing Constitution inconsistent with the provisions herein contained, are hereby wholly annulled.]

This amendment was adopted in 1836. This is the first provision for a census. The system of apportionment of representatives supersedes a part of Constitution, Ch. I, Sect. III, Art. II.

The whole is superseded by the next amendment.

#### THIRTEENTH ARTICLE OF AMENDMENT.

<sup>160</sup> A census of the inhabitants of each city and town, on the first day of May, shall be taken, and returned into the Secretary's office, on or before the last day of June, of the year one thousand eight hundred and forty, [and of every tenth year thereafter, which census shall determine the apportionment of Senators and Representatives for the term of ten years. The several Senatorial Districts now existing, shall be permanent. The Senate shall consist of forty members: and in the year one thousand eight hundred and forty, and every tenth year thereafter, the Governor and Council shall assign the number of Senators to be chosen in each district, according to the number of inhabitants in the same. But, in all cases, at least one Senator shall be assigned to each district. The members of the House of Representatives shall be apportioned in the following manner: Every town or city containing twelve hundred inhabitants, may elect one Representative; and two thousand four hundred inhabitants shall be the mean increasing

number which shall entitle it to an additional Representative. Every town containing less than twelve hundred inhabitants, shall be entitled to elect a Representative as many times, within ten years, as the number one hundred and sixty is contained in the number of the inhabitants of said town. Such towns may also elect one Representative for the year in which the valuation of estates within the Commonwealth, shall be settled. Any two or more of the several towns may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, and held before the first day of August, in the year one thousand eight hundred and forty, and every tenth year thereafter, form themselves into a Representative District, to continue for the term of ten years; and such district shall have all the rights in regard to representation, which would belong to a town containing the same number of inhabitants. The number of inhabitants which shall entitle a town to elect one Representative, and the mean increasing number, which shall entitle a town or city to elect more than one, and also the number by which the population of towns, not entitled to a Representative every year, is to be divided, shall be increased respectively, by one tenth of the numbers above mentioned, whenever the population of the Commonwealth shall have increased to seven hundred and seventy thousand, and for every additional increase of seventy thousand inhabitants, the same addition of one tenth shall be made respectively to the said numbers above mentioned. In the year of each decennial census, the Governor and Council shall, before the first day of September, apportion the number of Representatives which each city, town, and Representative District is entitled to elect, and ascertain how many years within ten years, any town may elect a Representative, which is not entitled to elect one every year; and the Governor shall cause the same to be published forthwith. Nine counsellors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the Senators and Representatives assembled in one room, who shall, as soon as may be, in like manner, fill up any vacancies that may happen in the Council, by death, resignation or otherwise. No person shall be elected

a counsellor, who has not been an inhabitant of this Commonwealth for the term of five years immediately preceding his election; and not more than one counsellor shall be chosen from any one Senatorial District in the Commonwealth.] No possession of a freehold or of any other estate shall be required as a qualification for holding a seat in either branch of the General Court, or in the Executive Council.

This amendment was adopted in 1840. The provisions for census and apportionment of representatives supersede the preceding amendment. The provisions for senatorial districts and for the election of Councillors supersede Constitution, Ch. I, Sect. II, Art. I; and Ch. II, Sect. III, Art. II, respectively. The abolition of property qualifications affects Constitution, Ch. I, Sect. II, Art. V; Ch. I, Sect. III, Art. III, and Ch. II, Sect. III, Art. II.

Census provisions superseded by Amendments XXI and XXII. Provisions relative to senators superseded by Amendment XXII; relative to representatives, by Amendment XXI; relative to councillors, by Amendment XVI.

#### FOURTEENTH ARTICLE OF AMENDMENT.

<sup>161</sup> In all elections of civil officers by the people of this Commonwealth, whose election is provided for by the constitution, the person having the highest number of votes shall be deemed and declared to be elected.

This amendment was adopted in 1855. Previous to the adoption of this amendment a majority vote was required in practically all elections.

#### FIFTEENTH ARTICLE OF AMENDMENT.

<sup>162</sup> The meeting for the choice of governor, lieutenant-governor, senators and representatives, shall be held on the Tuesday next after the first Monday in November, annually; but in case of a failure to elect representatives on that day, a second meeting shall be holden for that purpose on the fourth Monday of the same month of November.

This amendment was adopted in 1855. This changes the election date established by Amendment X. There can be no adjourned meeting for choice of officers other than representatives, and the second meeting for the choice of representatives cannot again be adjourned. Opinion of Justices, 23 Pick. 547.

## SIXTEENTH ARTICLE OF AMENDMENT.

<sup>163</sup> Eight councillors shall be annually chosen by the inhabitants of this Commonwealth, qualified to vote for governor. The election of councillors shall be determined by the same rule that is required in the election of governor. The legislature, at its first session after this amendment shall have been adopted, and at its first session after the next State census shall have been taken, and at its first session after each decennial State census thereafterwards, shall divide the Commonwealth into eight districts of contiguous territory, each containing a number of inhabitants as nearly equal as practicable, without dividing any town or ward of a city, and each entitled to elect one councillor: *provided, however*, that if, at any time, the constitution shall provide for the division of the Commonwealth into forty senatorial districts, then the legislature shall so arrange the councillor districts that each district shall consist of five contiguous senatorial districts, as they shall be, from time to time, established by the legislature. No person shall be eligible to the office of Councillor who has not been an inhabitant of the commonwealth for the term of five years immediately preceding his election. The day and manner of the election, the return of the votes, and the declaration of the said elections, shall be the same as are required in the election of governor. [Whenever there shall be a failure to elect the full number of councillors, the vacancies shall be filled in the same manner as is required for filling vacancies in the senate; and vacancies occasioned by death, removal from the State, or otherwise, shall be filled in like manner, as soon as may be after such vacancies shall have happened.] And that there may be no delay in the organization of the government on the first Wednesday of January, the governor, with at least five councillors for the time being, shall, as soon as may be, examine the returned copies of the records for the election of governor, lieutenant-governor, and councillors; and ten days before the said first Wednesday in January he shall issue his summons to such persons as appear to be chosen, to attend on that day to be qualified accordingly; and the secretary shall lay the returns before the senate and house of representatives



on the said first Wednesday in January, to be by them examined; and in case of the election of either of said officers, the choice shall be by them declared and published; but in case there shall be no election of either of said officers, the legislature shall proceed to fill such vacancies in the manner provided in the constitution for the choice of such officers.

This amendment was adopted in 1855. This supersedes the method of electing Councillors, provided by Amendment XIII. Vacancies are now filled by the Legislature, or by the Governor and Council, if the Legislature is not in session. Amendment XXV. The provision for organization of the government supplements the provisions of Constitution, Ch. II, Sect. III, Art. VII.

*"Inhabitant."* Includes alien residents. But a Councillor must be a citizen at the time of his election. See under Amendment XXI.

*"The legislature shall proceed to fill such vacancies in the manner provided in the constitution for the choice of such officers."* It is not at all clear whether this means that the Legislature shall do the filling, or shall provide for the filling in a manner similar to that which the Constitution provides for the original election.

#### SEVENTEENTH ARTICLE OF AMENDMENT.

<sup>164</sup> The secretary, treasurer and receiver-general, auditor, and attorney-general, shall be chosen annually, on the day in November prescribed for the choice of governor; and each person then chosen as such, duly qualified in other respects, shall hold his office for the term of one year from the third Wednesday in January next thereafter, and until another is chosen and qualified in his stead. The qualification of the voters, the manner of the election, the return of the votes, and the declaration of the election, shall be such as are required in the election of governor. In case of a failure to elect either of said officers on the day in November aforesaid, or in case of the decease in the mean time of the person elected as such, such officer shall be chosen on or before the third Wednesday in January next thereafter from the two persons who had the highest number of votes for said offices on the day in November aforesaid, by joint ballot of the senators and representatives in one room: and in case the office of secretary, or treasurer and receiver-general, or auditor, or attorney-general, shall become vacant from any cause during an annual or special session of

the general court, such vacancy shall in like manner be filled by choice from the people at large; but if such vacancy shall occur at any other time, it shall be supplied by the governor by appointment, with the advice and consent of the council. The person so chosen or appointed, duly qualified in other respects, shall hold his office until his successor is chosen and duly qualified in his stead. In case any person chosen or appointed to either of the offices aforesaid, shall neglect, for the space of ten days after he could otherwise enter upon his duties, to qualify himself in all respects to enter upon the discharge of such duties, the office to which he has been elected or appointed shall be deemed vacant. No person shall be eligible to either of said offices unless he shall have been an inhabitant of this Commonwealth five years next preceding his election or appointment.

This amendment was adopted in 1855. Before the adoption of this amendment these officers were elected by the Legislature, under Constitution, Ch. II, Sect. IV, Art. I.

#### EIGHTEENTH ARTICLE OF AMENDMENT.

<sup>165</sup> All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own schools.

This amendment was adopted in 1855. It affects to some extent the tax power (Constitution, Ch. I, Sect. I, Art. IV), and the encouragement of education (Constitution, Ch. V, Sect. II).

By four justices, with three dissenters, the opinion was given that the appropriation of public money for aiding any church, religious denomination or religious society is prohibited. Opinion of Justices, 214 Mass. 599, 601. An earlier opinion held that taxation for "instruction in piety, religion and morality" was expressly authorized. Opinion of Justices, 195 Mass. 607, 608.

Money raised by local taxation for public schools cannot be diverted to a school wholly or partly sectarian. *Merrick v. Amherst*, 12 Allen, 500, 508-509.

Citing *Jenkins v. Andover*, 103 Mass. 94, 100, and *Merrick v. Amherst*, 12 Allen, 500, 508-509, the Court said in *Opinion of Justices*, 214 Mass. 599, 601: "Public schools never have been understood to include higher institutions of learning like colleges and universities. All moneys raised by taxation for the purpose of expenditure within the sphere of the public or common schools, as these words generally have been understood, must be disbursed exclusively for the support of such schools and cannot be diverted to any other kind of school maintained in whole or in part by any religious sect. But there is no constitutional prohibition of appropriations for higher educational institutions, societies or undertakings under sectarian or ecclesiastical control."

"*In which the money is to be expended.*" "This means the town or city in which the school is, where tuition is given and where payment for it is to be made rather than the town or city that makes the payment," and hence justifies the payment by one town of the expense of educating its children in the public schools of another town. *Fiske v. Huntington*, 179 Mass. 571, 575.

#### NINETEENTH ARTICLE OF AMENDMENT.

<sup>166</sup> The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, [commissioners of insolvency,] and clerks of the courts, by the people of the several counties, and that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe.

This amendment was adopted in 1855. Commissioners of insolvency stricken out by Amendment XXXVI, in 1894.

The creation of an appointive office of State constable is not a violation of the requirement that sheriffs be elected. *Commonwealth v. Intoxicating Liquors*, 110 Mass. 172, 174.

This article does not establish any tenure. Thus the Legislature may abolish the office of register of probate and transfer its powers and duties to another office. But, regardless of whether he is styled clerk or register, the principal recording officer of each probate court must be elected by the people of the county. *Opinion of Justices*, 117 Mass. 603. See under Constitution, Ch. I, Sect. I, Arts. III and IV; cf. *Dearborn v. Ames*, 8 Gray, 1, 14-17.

The requirement that clerks of courts be elected does not apply to clerks of inferior courts which extend only over a part of a county. *Commonwealth v. Mather*, 121 Mass. 65. Nor to assistant clerks. *Jacobs v. Measures*, 13 Gray, 74.

TWENTIETH ARTICLE OF AMENDMENT.

<sup>167</sup> No person shall have the right to vote, or be eligible to office under the Constitution of this Commonwealth, who shall not be able to read the Constitution in the English language, and write his name — *provided, however*, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any persons who shall be sixty years of age or upwards at the time this amendment shall take effect.

This amendment was adopted in 1857. See Amendment III as to the applicability of voting qualifications.

TWENTY-FIRST ARTICLE OF AMENDMENT.

<sup>168</sup> A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the Secretary of the Commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters; and in each city, said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of representatives for the periods between the taking of the census. The House of Representatives shall consist of two hundred and forty members, which shall be apportioned by the Legislature, at its first session after the return of each enumeration as aforesaid, to the several counties of the Commonwealth, equally, as nearly as may be, according to their relative numbers of legal voters, as ascertained by the next preceding special enumeration; and the town of Cohasset, in the county of Norfolk, shall, for this purpose, as well as in the formation of districts, as hereinafter provided, be considered a part of the county of Plymouth; and it shall be the duty of the Secretary of the Commonwealth, to certify, as soon as may be after it is determined by the Legislature, the number of representatives

to which each county shall be entitled, to the board authorized to divide each county into representative districts. The mayor and aldermen of the city of Boston, the county commissioners of other counties than Suffolk, — or in lieu of the mayor and aldermen of the city of Boston, or of the county commissioners in each county other than Suffolk, such board of special commissioners in each county, to be elected by the people of the county, or of the towns therein, as may for that purpose be provided by law, shall, on the first Tuesday of August next after each assignment of representatives to each county, assemble at a shire town of their respective counties, and proceed, as soon as may be, to divide the same into representative districts of contiguous territory, so as to apportion the representation assigned to each county equally, as nearly as may be, according to the relative number of legal voters in the several districts of each county; and such districts shall be so formed that no town or ward of a city shall be divided therefor, nor shall any district be made which shall be entitled to elect more than three representatives. Every representative, for one year at least next preceding his election, shall have been an inhabitant of the district for which he is chosen, and shall cease to represent such district when he shall cease to be an inhabitant of the Commonwealth. The districts in each county shall be numbered by the board creating the same, and a description of each, with the numbers thereof and the number of legal voters therein, shall be returned by the board, to the Secretary of the Commonwealth, the county treasurer of each county, and to the clerk of every town in each district, to be filed and kept in their respective offices. The manner of calling and conducting the meetings for the choice of representatives, and of ascertaining their election, shall be prescribed by law. [Not less than one hundred members of the House of Representatives shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.]

This amendment was adopted in 1857. This supersedes Amendment XIII. The quorum provision superseded Constitution, Ch. I, Sect. III, Art. IX, which provided a quorum of sixty. It was in turn superseded by Amendment XXXIII, in 1891, making a majority of the members a quorum.

"The first day of May" is set only for the year 1857. Thereafter the decennial census may be held on any day set by the Legislature. Opinion of Justices, 220 Mass. 609.

*"In each ward."* "The provision concerning wards must be held to apply to wards if they exist, not to require that every city should be divided into wards." Opinion of Justices, 157 Mass. 595, 599.

*"Apportioned by the Legislature at its first session."* This means the first session begun after the return of the census. Until the new apportionment is completed, the old apportionment stands. Opinion of Justices, 157 Mass. 595. Thus the Legislature, in incorporating a new town from territory set off from another town or from other towns, cannot change the town lines, so far as the election of representatives is concerned, until the next decennial census. Opinion of Justices, 6 Cush. 575, 577, 582. This opinion was given under Amendment XIII, but seems to apply here.

*"Apportion the representation equally."* "The duty of dividing the authorized number of representatives among the legal voters is in a sense political, yet so far as it affects, contrary to the Constitution, the rights of citizens, such an infringement is cognizable in the courts." An obvious and indisputable inequality in apportionment is unconstitutional and void, and the apportioning body may be compelled by mandamus to make a new apportionment. *Atty.-Gen. v. Apportionment Comrs.*, 224 Mass. 598. The proceedings must be brought by a person whose own right as a voter has been injured. *McGlue v. County Comrs.*, 225 Mass. 59, 62. But an unfair apportionment cannot be revised by the Legislature. Opinion of Justices, 10 Gray, 613. See also *Donovan v. Apportionment Comrs.*, 225 Mass. 55; *Brophy v. Apportionment Comrs.*, 225 Mass. 124.

*"No town or ward of a city shall be divided."* The town and ward lines to be considered are those which existed on the day on which was taken the census, on the basis of which the apportionment in question is made. Opinion of Justices, 142 Mass. 601, 604; Opinion of Justices, 157 Mass. 595, 597.

*"Inhabitant."* A year's inhabitancy is satisfied by a year's living in the district, even though for a part of that time the person in question was an alien. However, on broad general principles none but citizens are considered by the Supreme Judicial Court as being eligible for election to office. Opinion of Justices, 122 Mass. 594, 600.

## TWENTY-SECOND ARTICLE OF AMENDMENT.

<sup>169</sup> A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the Secretary of the Commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five,

and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters, and in each city said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of Senators for the periods between the taking of the census. The Senate shall consist of forty members. The General Court shall, at its first session after each next preceding special enumeration, divide the Commonwealth into forty districts of adjacent territory, each district to contain, as nearly as may be, an equal number of legal voters, according to the enumeration aforesaid: — *provided, however*, that no town or ward of a city shall be divided therefor; and such districts shall be formed, as nearly as may be, without uniting two counties, or parts of two or more counties, into one district. Each district shall elect one Senator, who shall have been an inhabitant of this Commonwealth five years at least immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen; and he shall cease to represent such senatorial district when he shall cease to be an inhabitant of the Commonwealth. [Not less than sixteen Senators shall constitute a quorum for doing business;] but a less number may [organize temporarily,] adjourn from day to day, and compel the attendance of absent members.

This amendment was adopted in 1857. For general interpretation, see notes under the preceding amendment.

The provision relative to quorum supersedes Constitution, Ch. I, Sect. III, Art. IX, and has been in turn superseded by Amendment XXXIII, in 1891.

#### TWENTY-THIRD ARTICLE OF AMENDMENT.

<sup>170</sup> ["No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States for two years subsequent to his naturalization, and shall be otherwise qualified, according to the Constitution and Laws of this Commonwealth: *provided*, that this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof; and *provided, further*, that it shall not affect the

rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom.”]

This amendment was adopted in 1859. It was repealed in 1863 by Amendment XXVI.

#### TWENTY-FOURTH ARTICLE OF AMENDMENT.

<sup>171</sup> Any vacancy in the Senate shall be filled by election by the people of the unrepresented district, upon the order of a majority of Senators elected.

This amendment was adopted in 1860. Originally, by Constitution, Ch. I, Sect. II, Art. IV, superseded by the above provision, vacancies were filled by a joint ballot of the Legislature.

#### TWENTY-FIFTH ARTICLE OF AMENDMENT.

<sup>172</sup> In case of a vacancy in the Council, from a failure of election or other cause, the Senate and House of Representatives shall, by concurrent vote, choose some eligible person from the people of the district wherein such vacancy occurs, to fill that office. If such vacancy shall happen when the Legislature is not in session, the Governor, with the advice and consent of the Council, may fill the same by appointment of some eligible person.

This amendment was adopted in 1860. This supersedes the provision contained in Amendment XVI.

“*The Governor, with the advice and consent of the Council.*” This does not require advance advice, merely concurrence. Opinion of Justices, 190 Mass. 616, 618–620.

#### TWENTY-SIXTH ARTICLE OF AMENDMENT.

<sup>173</sup> The twenty-third article of the articles of amendment of the Constitution of this Commonwealth, which is as follows, to wit: — “No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States, for two years subsequent to his naturalization, and shall be otherwise qualified according to the Constitution and Laws of this Commonwealth: *provided*, that this Amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption



thereof; and *provided, further*, that it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom," is hereby wholly annulled.

This amendment was adopted in 1863.

#### TWENTY-SEVENTH ARTICLE OF AMENDMENT.

<sup>174</sup> So much of article two of chapter six of the constitution of this Commonwealth as relates to persons holding the office of president, professor or instructor of HARVARD COLLEGE, is hereby annulled.

This amendment was adopted in 1877. The article referred to provided that certain officers should not at the same time have a seat in the Senate or House.

#### TWENTY-EIGHTH ARTICLE OF AMENDMENT.

<sup>175</sup> [No person having served in the army or navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of being a pauper; or, if a pauper, because of the non-payment of a poll tax.]

This amendment was adopted in 1881. It modifies Amendment III, which disqualified paupers from voting. By Amendment XXXI, adopted in 1890, this amendment was changed by substituting for the words "being a pauper" the words "receiving or having received aid from any city or town." By Amendment XXXII, adopted in 1891, no one is now disqualified for the non-payment of a poll.

#### TWENTY-NINTH ARTICLE OF AMENDMENT.

<sup>176</sup> The general court shall have full power and authority to provide for the inhabitants of the towns in this Commonwealth more than one place of public meeting within the limits of each town for the election of officers under the Constitution, and to prescribe the manner of calling, holding and conducting such meetings. All the provisions of the existing Constitution inconsistent with the provisions herein contained are hereby annulled.

This amendment was adopted in 1885. With respect to such towns, this supersedes the detailed election machinery provided by Constitution, Ch. I, Sect. II, Art. II; and Ch. II, Sect. I, Art. III.

#### THIRTIETH ARTICLE OF AMENDMENT.

<sup>177</sup> No person, otherwise qualified to vote in elections for governor, lieutenant-governor, senators, and representatives, shall, by reason of a change of residence within the Commonwealth, be disqualified from voting for said officers in the city or town from which he has removed his residence, until the expiration of six calendar months from the time of such removal.

This amendment was adopted in 1890. It affects Amendment III with respect to the residence qualification of six months.

#### THIRTY-FIRST ARTICLE OF AMENDMENT.

<sup>178</sup> Article twenty-eight of the Amendments of the Constitution is hereby amended by striking out in the fourth line thereof the words "being a pauper", and inserting in place thereof the words: — receiving or having received aid from any city or town, — and also by striking out in said fourth line the words "if a pauper", so that the article as amended shall read as follows: ARTICLE XXVIII. No person having served in the army or navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of receiving or having received aid from any city or town, or because of the non-payment of a poll tax.

This amendment was adopted in 1890.

#### THIRTY-SECOND ARTICLE OF AMENDMENT.

<sup>179</sup> So much of article three of the amendments of the Constitution of the Commonwealth as is contained in the following words: "and who shall have paid, by himself, or his parent, master, or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town or district of this Common-

wealth; and also every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above mentioned", is hereby annulled.

This amendment was adopted in 1891.

#### THIRTY-THIRD ARTICLE OF AMENDMENT.

<sup>180</sup> A majority of the members of each branch of the general court shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day, and compel the attendance of absent members. All the provisions of the existing Constitution inconsistent with the provisions herein contained are hereby annulled.

This amendment was adopted in 1891. This supersedes parts of Amendments XXI and XXII, which had superseded Constitution, Ch. I, Sect. II, Art. IX, and Ch. I, Sect. III, Art. IX, respectively.

#### THIRTY-FOURTH ARTICLE OF AMENDMENT.

<sup>181</sup> So much of article two of section one of chapter two of part the second of the Constitution of the Commonwealth as is contained in the following words: "and unless he shall at the same time be seized in his own right, of a freehold within the Commonwealth of the value of one thousand pounds;" is hereby annulled.

This amendment was adopted in 1892. It abolishes the property qualification of the Governor.

#### THIRTY-FIFTH ARTICLE OF AMENDMENT.

<sup>182</sup> So much of article two of section three of chapter one of the Constitution of the Commonwealth as is contained in the following words: "The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the house, and does not depart without leave," is hereby annulled.

This amendment was adopted in 1893. The effect was to remove the limit on expense money.

## THIRTY-SIXTH ARTICLE OF AMENDMENT.

<sup>183</sup> So much of article nineteen of the articles of amendment to the Constitution of the Commonwealth as is contained in the following words "commissioners of insolvency", is hereby annulled.

This amendment was adopted in 1894. Article XIX provided for the popular election of such officers.

## THIRTY-SEVENTH ARTICLE OF AMENDMENT.

<sup>184</sup> The governor, with the consent of the council, may remove Justices of the peace and notaries public.

This amendment was adopted in 1907. Before this amendment justices of the peace, being judicial officers, were removable only by address (Constitution, Ch. III, Art. I) or by impeachment (Constitution, Ch. I, Sect. II, Art. VIII); and notaries the same (Amendment IV).

## THIRTY-EIGHTH ARTICLE OF AMENDMENT.

<sup>185</sup> Voting machines or other mechanical devices for voting may be used at all elections under such regulations as may be prescribed by law: *provided, however*, that the right of secret voting shall be preserved.

This amendment was adopted in 1911. It is the first assertion of the right of secret voting contained in the Massachusetts Constitution. This amendment was rendered necessary by a decision of the Supreme Court that the use of voting machines would be unconstitutional. *Nichols v. Election Comrs.*, 196 Mass. 410, 415.

## THIRTY-NINTH ARTICLE OF AMENDMENT.

<sup>186</sup> Article ten of part one of the Constitution is hereby amended by adding to it the following words:— The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: *provided, however*, that the land and property authorized to be taken are specified in the

act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

This amendment was adopted in 1911. It extends the power of eminent domain. See under Declaration of Rights, Art. X.

#### FORTIETH ARTICLE OF AMENDMENT.

<sup>187</sup> Article three of the amendments to the Constitution is hereby amended by inserting after the word "guardianship", in line two, the following:—and persons temporarily or permanently disqualified by law because of corrupt practices in respect to elections.

This amendment was adopted in 1912. This adds a new disqualification for voting.

#### FORTY-FIRST ARTICLE OF AMENDMENT.

<sup>188</sup> Full power and authority are hereby given and granted to the general court to prescribe for wild or forest lands such methods of taxation as will develop and conserve the forest resources of the commonwealth.

This amendment was adopted in 1912. It takes forest and wild lands out of the requirement of Constitution, Ch. I, Sect. I, Art. IV, that all taxes must be "proportional," i.e., at the same rate for all classes of property.

#### FORTY-SECOND ARTICLE OF AMENDMENT.

<sup>189</sup> Full power and authority are hereby given and granted to the general court to refer to the people for their rejection or approval at the polls any act or resolve of the general court or any part or parts thereof. Such reference shall be by a majority yea and nay vote of all members of each house present and voting. Any act, resolve, or part thereof so referred shall be voted on at the regular state election next ensuing after such reference, shall become law if approved by a majority of the

voters voting thereon, and shall take effect at the expiration of thirty days after the election at which it was approved or at such time after the expiration of the said thirty days as may be fixed in such act, resolve or part thereof.

This amendment was adopted in 1913. Before this amendment the Legislature could not delegate its legislative powers to the electorate. Opinion of Justices, 160 Mass. 586.

#### FORTY-THIRD ARTICLE OF AMENDMENT.

<sup>190</sup> The general court shall have power to authorize the commonwealth to take land and to hold, improve, sub-divide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: *provided, however*, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

This amendment was adopted in 1915. Before this amendment, land could not be taken for resale. Opinion of Justices, 204 Mass. 616.

#### FORTY-FOURTH ARTICLE OF AMENDMENT.

<sup>191</sup> Full power and authority are hereby given and granted to the general court to impose and levy a tax on income in the manner hereinafter provided: Such tax may be at different rates upon income derived from different classes of property, but shall be levied at a uniform rate throughout the commonwealth upon incomes derived from the same class of property. The general court may tax income not derived from property at a lower rate than income derived from property, and may grant reasonable exemptions and abatements. Any class of property the income from which is taxed under the provisions of this article may be exempted from the imposition and levying of proportional and reasonable assessments, rates and taxes as at present authorized by the constitution. This article shall not be construed to limit the power of the general court to impose and levy reasonable duties and excises.

This amendment was adopted in 1915. It permits a form of taxation formerly unconstitutional because not proportional. Opinion of Justices, 220 Mass. 613.

## SUMMARY OF ORGANIZATION AND PRINCIPAL FUNCTIONS OF DEPARTMENTS IN THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT, 1917.

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### I. GENERAL ADMINISTRATION.

Executive Department, established 1780.

Governor, elected annually, salary \$10,000 per year.

Lieutenant-Governor, elected annually, salary \$2,000 a year. He is also a member of the Governor's Council.

Council of eight members, elected annually from eight districts into which the State is divided for that purpose, salary \$1,000 a year each.

Principal functions:

Of the Governor: to pass upon all legislation enacted by the General Court; to call, and preside at, meetings of the Council; to command State militia; to issue warrants for payments from the treasury; to approve notes for money borrowed in anticipation of revenue; to issue precepts for certain special elections; to deliver to other States fugitives from justice and to demand of other States the return of such fugitives.

Of the Governor with the advice and consent of the Council: to prorogue the General Court and call it together in special session; to appoint State officials; to determine salaries of certain State officials and compensation of special boards and commissions; to consider proposals for the construction of armories; to inspect State buildings; to pass upon contracts for construction of State highways, contracts and leases by the Waterways and Public Lands Commission; to authorize all bond issues and all purchases and sales of bonds and other securities; to examine annually all official bonds in the treasury; to approve rules and regulations adopted by various boards and commissions; to pardon persons convicted of crime; to approve official bonds of the Secretary, Treasurer and Auditor.

Of the Lieutenant-Governor: to assume the office and duties of the Governor during his absence from the State or incapacity; to serve as a member of the Governor's Council except when acting as Governor.

Department of the Secretary of the Commonwealth, established 1780.

Secretary, elected annually, salary \$6,000 per year.

Two deputies, appointed by the Secretary, empowered to act for him in case of his disability. The first deputy has charge of the election and vital statistics divisions of the department, salary \$4,000 per year. The second deputy has charge of the legislative, corporation and trade-mark divisions, salary \$3,000 per year.

Principal functions: to have the custody of certain public records; to attest commissions of public officers; to exercise general charge of State printing; to publish the Province Laws; to provide blank books, etc., for the use of registrars of voters; to furnish nomination papers for use at the State primaries; to receive for filing all nomination papers; to receive and canvass returns of votes at primaries; to notify successful candidates; to provide for use at State elections a ballot box and counting apparatus for each polling place in every city and town, together with ballots, blank forms, instructions, etc.; to receive and transmit to the Governor and Council certified copies of records of votes at each State election; to issue certificates of election to specified officials; to receive for filing statements of election expenses and to perform other duties connected with elections; to collect and tabulate vital statistics; to issue certificates of incorporation under general laws; to receive annual certificates of their condition from corporations, certificates of changes in capital stock or in name, and other specified certificates; to receive and file trade-marks, etc.; and to receive numerous returns in addition to those mentioned.

Department of the Treasurer and Receiver-General, established 1780.

Treasurer and Receiver-General, elected annually, may not serve for more than five successive years, salary \$5,000 per year.

One deputy, appointed by the Treasurer with the consent of the Governor and Council, salary \$3,000 per year.

Principal functions: to receive and pay out all moneys; to invest sinking funds and compute sinking fund requirements; to levy assessments on metropolitan districts; to care for Massachusetts School Fund, trust funds, etc.

Department of the Auditor of the Commonwealth, established by chapter 56, Acts of 1849, amended by chapter 597, Acts of 1908 (Revised Laws, chapter 6).

Auditor, elected annually, salary \$5,000 per year.

Two deputies, appointed by the Auditor with the consent of the Governor and Council. The salary of the first deputy is \$4,000 per year and that of the second deputy is \$3,000 per year.

Principal functions: to compile and publish the estimates of all State departments, institutions and undertakings relating to



their requests for appropriations, with information pertinent thereto; to examine accounts and demands against the Commonwealth submitted for payment; to prepare certificates for payments to be made from the treasury; to keep a distinct account or record of all receipts and expenditures; to supervise and control accounts in all departments; to measure the State printing; to verify lists of employees given in Public Document No. 90; to prepare an annual report giving information as to State finances.

Department of the Attorney-General, established 1780.

Attorney-General, elected annually, salary \$7,000 per year.

Five assistant attorneys-general, appointed by the Attorney-General with the consent of the Governor and Council, one at \$4,200, two at \$4,000, one at \$2,750, one at \$1,800 per year.

Principal functions: to represent the State in criminal and civil cases and to report annually thereon; to prosecute persons or corporations; to advise with district attorneys, Secretary, etc.; to assist the General Court in the preparation of legislative documents; to render opinions on legal matters to the Governor and the General Court.

Department of Supervisor of Administration, established by chapter 296, General Acts of 1916, succeeding the Commission on Economy and Efficiency and the Board of Publication.

Supervisor of Administration, appointed by the Governor with the advice and consent of the Council for a term of three years, salary \$5,000 per year.

The Supervisor appoints deputies with the consent of the Governor and Council.

Principal functions: to investigate and regulate the method of purchasing all stores, supplies and materials used by the Commonwealth or by any officer, board, bureau, commission, institution or department maintained or employed by the Commonwealth; to examine, suggest changes in, approve or disapprove the annual reports and all special reports and other documents issued by or on behalf of the Commonwealth, excepting the reports of the officers of either branch of the General Court and of elected officials; to approve measures proposed for safeguarding the records of the Commonwealth; to make a special examination of any matter affecting the management or finances of any department or institution, and to report on estimates for appropriations upon the request of the Governor, the Council committee on finance, the Legislature or either of the ways and means committees, or on its own initiative; to make studies of the laws governing the financial transactions of the Commonwealth, of reorganization, consolidation or co-ordination of departments

and institutions, of new methods of administration, of classification of employees and fixing maximum and minimum salaries, standardization of vacations and the budget method of appropriating money; to prepare and publish Public Document No. 90, — a list of State officials and employees.

**State Ballot Law Commission and Board of Voting Machine Examiners**, established by section 7, chapter 436, Acts of 1888, amended by chapter 436, Acts of 1890, and chapter 383, Acts of 1896.

Three members, appointed by the Governor with the advice and consent of the Council, for terms of three years, salary, ordinarily \$500 per year. Members may hold no public office except that of justice of the peace or notary public, and there must always be on the Commission a member of each of the two leading political parties in the State.

Principal functions: to consider questions relating to the nomination of State officers; to examine and pass upon voting machines, ballot boxes and counting apparatus and to make regulations for their use.

**Civil Service Commission**, established by chapter 320, Acts of 1884.

Three members, appointed by the Governor and Council for terms of three years. Not more than two of the Commissioners may be of the same political party. The salaries are: chairman \$2,500, other members \$2,000 per year.

Principal functions: to regulate selection of persons to fill appointive positions in the government of the Commonwealth and of cities; to pass on appointments of heads of departments in city of Boston and of other cities.

**Board of Retirement**, established by chapter 532, Acts of 1911.

Three unpaid members, one elected by the Retirement Association, the State Treasurer, *ex officio*, and a third person chosen by these two.

Principal function: to carry out the provisions of the law which provides for the payment of a retirement pension to State employees.

**Department of Tax Commissioner and Commissioner of Corporations**, established in its present form by chapter 160, Acts of 1890.

**Tax Commissioner and Commissioner of Corporations**, appointed by the Governor and Council for a term of three years, salary \$5,000 per year.

Two deputies, appointed by the Tax Commissioner with the consent of the Governor and Council, whose duties extend to all divisions of the department, salaries, first deputy, \$4,000; second deputy, \$3,000 per year.

One special income tax deputy, appointed by the Tax Commissioner with the consent of the Governor and Council, salary \$4,500.

## Principal functions:

As Tax Commissioner: to fix taxes upon certain classes of corporations and upon inheritances; to establish the basis for the levy of State and county taxes; to supervise local assessors and collectors of taxes; to assess and collect State income tax.

As Commissioner of Corporations: to examine papers relating to the organization of corporations, changes in their capital stock, etc.; to receive annual reports of corporations; to pass upon issues of securities by certain classes of corporations.

Board of Appeal from the Decisions of the Tax Commissioner, established by chapter 283, Acts of 1865.

Three members, unpaid, — Treasurer and Receiver-General and Auditor, *ex officio*, and a member of the Governor's Council designated by the Governor.

Principal functions: to hear and determine appeals from decisions of the Tax Commissioner; to abate taxes assessed on the corporate franchises of domestic corporations which are unpaid and uncollectable, on the recommendation of the Attorney-General and Tax Commissioner after the expiration of five years from the date of certification of such taxes to the Treasurer and Receiver-General.

Department of Commissioner of Public Records, established in its present form by chapter 333, Acts of 1892.

Commissioner, appointed by the Governor and Council for a term of three years, salary \$3,000 per year.

Principal functions: to see that all the public records in the departments, offices and institutions of the Commonwealth, and of the counties, cities and towns therein, are safeguarded against loss by fire, theft or deterioration; to see that they are in the hands of proper custodians, are written with the State standard ink or with typewriting ribbons that have been tested and approved by the Commissioner, are entered upon paper of proper quality and are kept in good condition and repair, and that the books are substantially bound; to pass upon plans for fireproof rooms or vaults to be constructed for such records, and to pass upon the quality of safes when purchased for records. All measures for safeguarding the public records of the Commonwealth are subject to approval by the Supervisor of Administration.

Commission on Uniformity of Legislation in the United States, established in its present form for a term of five years by chapter 381, Acts of 1914.

Three unpaid members, appointed by the Governor and Council.

Principal function: to promote greater uniformity of legislation among the States.

Commission for Consolidating and Arranging the General Laws, established by chapter 43, Resolves of 1916. This Commission is to make its final report in January, 1919.

Three members, appointed by the Governor and Council, salary \$5,000 per year each.

Principal function: to consolidate and arrange the General Laws.

Department of Sergeant-at-Arms, established by chapter 154, Acts of 1835.

Sergeant-at-Arms, elected annually by the Legislature, salary \$3,500 per year.

Principal functions: to serve processes and execute orders enjoined upon him by the General Court; to attend members or clerks charged with a message from one branch to the other or to the Governor; to preserve order during sessions; to care for and have charge of the State House and State offices in other buildings.

State House Commission, established by chapter 65, Acts of 1857, amended by chapter 128, Acts of 1887, chapter 284, Acts of 1895, and chapter 10 of the Revised Laws.

Three members, the Secretary of the Commonwealth, the Treasurer and Receiver-General, and the Sergeant-at-Arms, *ex officio*, unpaid.

Principal functions: to direct and control expenditure of appropriations for furniture and fixtures to be used in the State House or in State offices in other buildings, exclusive of State institutions.

Art Commission, established by chapter 422, Acts of 1910.

Five unpaid members, appointed by the Governor and Council for terms of five years.

Principal function: to advise regarding the acquisition, erection, construction or remodeling of works of art in or on property of the Commonwealth, and regarding the artistic character of buildings erected or remodeled by the Commonwealth or on land owned by the Commonwealth.

Department of Controller of County Accounts, established by chapter 438, Acts of 1887.

Controller, appointed by the Governor and Council for a term of three years, salary \$2,500 per year.

Four deputy controllers, appointed by the Controller with the consent of the Governor and Council. The salaries are: first deputy \$1,800, second and third deputies \$1,500, and fourth deputy \$1,200 per year.

Principal functions: to prescribe, systematize and examine county accounts; to examine bonds of county officers; to prepare and furnish forms for certain county reports; to report to the General Court the annual estimates of county receipts and expenditures.

## II. MILITARY AFFAIRS.

Department of The Adjutant-General, established in 1780.

The Adjutant-General, who is also chief of staff, appointed by the Governor for one year, salary \$3,600 per year.

Principal functions: to distribute all orders from the Governor as Commander-in-Chief; to execute orders from the Commander-in-Chief relative to perfecting the system of military discipline established by Federal and State laws; to receive officers' returns on the condition of the militia and report annually thereon to the Governor and Secretary of War; to prosecute soldiers' claims; to have the custody of old military records; to act upon applications for gratuities to veteran soldiers and sailors.

Department of the Quartermaster, established by chapter 107, Acts of 1809-10, but usually held by The Adjutant-General until a separate department was established in 1907. Organization of the department was defined by chapter 604, Acts of 1908.

The Quartermaster-General, appointed by the Governor and Council for term of five years, salary \$2,000 per year.

Principal function: to arm, equip and transport Massachusetts troops and maintain armories.

The Medical Department, established by chapter 219, Acts of 1861.

The Surgeon-General, appointed by the Governor and Council for a term of five years, salary \$1,500 per year.

Principal functions: to safeguard the health of the militia; to make physical examinations of officers and men; to care for the United States medical equipment issued to the Commonwealth; to examine applicants for State aid and admission to soldiers' homes.

Armory Commission, established by chapter 384, Acts of 1888, amended by section 6, chapter 526, Acts of 1907.

Three members, The Adjutant-General and the Quartermaster-General, *ex officio*, the third member a regimental commander appointed by the Governor and Council. The Adjutant-General receives no compensation; the Quartermaster-General receives one per cent of the cost of armories, not exceeding \$1,500 per year; the third member receives one per cent of the cost of armories, not exceeding \$2,000 per year.

Principal functions: to construct armories; to purchase or lease land suitable for drill grounds and target ranges.

Bureau of War Records, established by chapter 475, Acts of 1899, amended by chapter 211, Acts of 1912.

The Adjutant-General is *ex officio* the Commissioner of War Records.

Compiler, appointed by The Adjutant-General, salary \$2,400 per year.

Principal functions: to compile and publish a complete roster of Massachusetts men in United States service during the Civil War.

Department of Commissioner of State Aid and Pensions, established by chapter 192, Acts of 1902.

Commissioner, appointed by the Governor and Council for a term of three years, salary \$2,700 per year.

One deputy commissioner, appointed by the Governor and Council for a term of three years, salary \$2,300 per year.

Principal functions: to administer the law providing aid for Massachusetts citizens who served in the Civil and Spanish Wars, certain dependent relatives of such men, and women who served as army nurses; to prepare pension, bounty and back pay claims of Massachusetts citizens against the United States Government.

### III. PROTECTION OF PERSONS AND PROPERTY.

Department of District Police, established by chapter 305, Acts of 1879.

Chief, appointed by the Governor from among the members of the force, to hold office indefinitely, salary \$3,000 per year.

Three deputy chiefs, appointed by the Governor from the members, to hold office indefinitely, salary \$2,400 per year. One is in charge of the detective department, one in charge of the building inspection department, and one in charge of the boiler inspection department.

Principal functions:

Chief: to approve Sunday entertainments; to receive and dispose of confiscated liquors and weapons; to license theatres and public halls; to grant permits for moving pictures and to assistant operators of moving-picture machines.

Detective department: to enforce criminal laws, laws regulating storage and sale of explosives, fireworks, etc., laws regulating fisheries, and other laws applying to public waters.

Building department: to enforce laws regulating construction of certain buildings, and erection and use of moving-picture machines; to examine and license moving-picture operators.

Boiler inspection department: to inspect steam boilers and air tanks; to examine and license engineers and firemen and operators of hoisting machinery not run by steam.

All departments are subject to call for police duty.

Board of Boiler Rules, established by chapter 465, Acts of 1907.

Five members, — chief inspector of the boiler inspection department of the District Police, who is chairman, and four members appointed by the Governor and Council for terms of three years. One member must represent the boiler-using interests, one the boiler-manufacturing interests, one the boiler-insurance interests, and one must be an operating engineer. The chairman serves without compensation, other members receive \$250 per year.

Principal functions: to formulate rules for construction, installation and inspection of steam boilers; to hold hearings on petitions for changes in rules; to prescribe regulations on operation of air tanks, etc.

Department of Fire Prevention Commissioner for the Metropolitan District, established by chapter 795, Acts of 1914.

Commissioner, appointed by the Governor and Council for a term of three years, salary \$3,500 per year.

One deputy, appointed by the Governor and Council for a term of three years, salary \$2,500 per year.

Principal function: to provide for more effective prevention of fires throughout 22 specified cities and towns of the metropolitan district and such other cities and towns as may accept the provisions of the statute creating this office.

Firemen's Relief Fund Commission, established by chapter 450, Acts of 1890.

Board of five members, unpaid, three of whom are appointed by the Governor and Council for terms of three years each, the other two being chosen by the Massachusetts State Firemen's Association.

Principal functions: to administer fund for relief of firemen injured, and of the families of firemen killed, in performance of duty, and to pass upon claims for such relief.

Commissioners of Wrecks and Shipwrecked Goods, established by chapter 98, Acts of 1887.

Nine individual commissioners, not a board, appointed by the Governor and Council indefinitely; paid for service rendered.

Principal functions: to take charge of wrecks and shipwrecked goods and hold them for the owner, and to sell all or part if necessary.

#### IV. PROTECTION OF THE PUBLIC HEALTH.

State Department of Health, established in its present form by chapter 792, Acts of 1914.

Commissioner, appointed by the Governor and Council for a term of five years, salary \$7,500 per year.

Public Health Council of seven members, including the Health Commissioner, who is a member *ex officio*, appointed by the Governor and Council for terms of three years, salary of six appointed members \$10 per day for each day of service.

Principal functions: to take charge of the prevention and control of all communicable diseases; to make rules and regulations and administer the laws relative to health and sanitation; to issue publications about health matters; to distribute anti-toxins, etc.; to inspect samples of food and drugs and prosecute violations of the pure food and drug law; to investigate

water supplies and sewerage and drainage systems; to advise concerning the sanitary conditions of public institutions; to inspect dairies, slaughter-houses and cold-storage warehouses; to license plumbers.

Metropolitan Water and Sewerage Board, established in its present form by chapter 168, Acts of 1901.

Board of three members, one appointed each year by the Governor and Council for a term of three years; chairman's salary \$5,000 per year, that of the other two members \$4,000 per year each.

Principal functions: to construct, maintain and operate water works and sewerage systems for cities and towns of the metropolitan district.

Homestead Commission, established by chapter 607, Acts of 1911, amended by chapter 595, Acts of 1913.

The Commission consists of nine members; the Director of the Bureau of Statistics, the President of the Massachusetts Agricultural College, the Bank Commissioner, and a member of the Department of Health (selected by the department) are *ex officio* members; the other five are appointed by the Governor and Council for terms of three years. All are unpaid with the exception of the member who acts as secretary, he being remunerated for any loss of time from his regular work due to the business of the Commission.

Principal functions: to study building and tenement-house laws; to investigate defective housing conditions and assist local planning boards.

#### V. REGULATION OF PUBLIC UTILITIES.

Public Service Commission, established by chapter 794, Acts of 1913, to replace the Board of Railroad Commissioners established by chapter 408, Acts of 1869.

Five members, one appointed each year by the Governor and Council for a term of five years; chairman's salary \$8,500 per year, the other members \$8,000 per year each.

Principal functions: to regulate and generally to supervise steam and electric railroads, street railways, steamboat lines, telephone and telegraph companies, and the operation of appliances, facilities and equipment utilized in connection with the service of all such public utilities; to approve the acquisition and maintenance of pleasure resorts by street railway companies.

Board of Gas and Electric Light Commissioners, established by chapter 314, Acts of 1885, as the Board of Gas Commissioners. It was given its present title by chapter 373, Acts of 1889.



Board of three members, appointed by the Governor and Council for three-year terms; chairman's salary \$5,000, other members \$4,500 each per year.

Principal functions: to supervise and regulate gas and electric light companies, water companies and municipal lighting plants; to inspect gas and gas meters; to examine and test electric meters; to abate smoke nuisance in Boston, Cambridge, Somerville, Everett, Chelsea and Brookline.

#### VI. REGULATION OF BANKING AND INSURANCE.

Department of Bank Commissioner, established by chapter 14, Acts of 1838.

Commissioner, appointed by the Governor and Council for three years, salary \$5,000 per year.

One deputy, appointed by the Bank Commissioner with the advice and consent of the Governor and Council, empowered to act for the Bank Commissioner in case of his absence or disability.

Principal functions: to examine and supervise State banking institutions and credit unions; to examine State Treasurer's department semi-annually.

Board of Bank Incorporation, established by chapter 204, Acts of 1906.

Three members, the Bank Commissioner, the Treasurer and Receiver-General and the Commissioner of Corporations, *ex officio*, without compensation.

Principal functions: to hear and pass upon all applications for the establishment of domestic banking corporations, trust departments of trust companies, and for changing names of banking institutions incorporated in Massachusetts.

Trustees of the General Insurance Guaranty Fund, established by chapter 561, Acts of 1907.

Seven trustees, one appointed each year by the Governor and Council for a term of seven years, no compensation.

State Actuary, appointed by the trustees, with the approval of the Governor and Council, for an indefinite term of office, salary \$2,400 per year.

Medical Director, appointed by the trustees, with the approval of the Governor and Council, for an indefinite term of office, salary \$2,500 per year.

Principal functions:

Trustees: to hold in trust funds to guarantee insurance policies issued by savings banks; to assist insurance banks in encouraging agencies.

State Actuary: to perform work of insurance actuary for insurance banks.

Medical Director: to pass upon all applications for insurance.

## VIII. BOARDS OF REGISTRATION AND EXAMINATION.

Board of Registration in Medicine, established by chapter 458, Acts of 1894.

Seven members, appointed by the Governor and Council for terms of seven years. Secretary's salary \$2,500 per year, other six members receive \$300 each per year.

Principal functions: to examine all persons who seek to practice medicine in this State; to investigate complaints of irregularities in medical practice, and, when necessary, refer cases to the proper prosecuting officers; to investigate the records of all physicians convicted of crime in connection with the practice of medicine, and for cause, after hearing, to revoke licenses to practice.

Board of Dental Examiners, established by chapter 301, General Acts of 1915, succeeding Board of Registration in Dentistry, established by chapter 137, Acts of 1887.

Five members, appointed by the Governor and Council for terms of five years each. Chairman and secretary receive \$400 per year each, other members \$300 each per year.

Principal function: to examine and issue certificates to successful candidates who wish to practice dentistry in this State.

Board of Registration in Pharmacy, established by chapter 313, Acts of 1885.

Five members, appointed by the Governor and Council for terms of five years each. Secretary's salary \$1,000, other members receive \$700 per year each.

Principal functions: to examine applicants for registration as pharmacists and issue certificates of registration; to investigate complaints of violations of law; to suspend and revoke certificates for cause.

Board of Registration in Optometry, established by chapter 700, Acts of 1912.

Five members, appointed by the Governor and Council for terms of five years. No member eligible for reappointment. Salary, \$10 for each member for each day of service.

Principal functions: to examine applicants for registration as optometrists; to register those qualified; to revoke certificates of registration for cause.

Board of Registration of Nurses, established by chapter 449, Acts of 1910.

Five members. Secretary of Board of Registration in Medicine is member *ex officio* and also secretary, other four members, three of whom must be trained nurses and one a superintendent of a hospital having a nurses' training school attached, appointed by the Governor and Council for terms of five years each. Secretary's salary \$1,500 per year, other four members not more than \$150 each per year.

Principal functions: to examine applicants for registration as nurses; to register those qualified; to investigate complaints of violations of law.

Board of Registration in Embalming, established by chapter 473, Acts of 1905.

Three members, appointed by the Governor and Council for terms of three years each. Salary \$100 per year each.

Principal functions: to regulate practice of embalming within the Commonwealth; to examine applicants for registration as embalmers and to certify those qualified; to investigate complaints of violations of law.

Board of Registration in Veterinary Medicine, established by chapter 249, Acts of 1903.

Five members, appointed by the Governor and Council for five years. Board elects chairman and secretary for one year. Secretary's salary \$400 per year, other four members receive \$50 each per year.

Principal functions: to examine persons desiring to practice veterinary medicine; to certify those qualified; to investigate complaints of violations of law; to revoke certificates of registration for cause.

Board of Electrical Examiners, created by chapter 296, General Acts of 1915.

Three members, chairman of the Civil Service Commission, Fire Prevention Commissioner for the Metropolitan District, and Commissioner of Education, *ex officio*. No compensation.

Principal functions: to examine and register all persons, firms and corporations desiring to install wires or apparatus for electric light, heat or power purposes; to grant two classes of licenses, "master's certificate," which allows the holder to conduct business as an employing electrician but does not entitle him to perform the actual work, and "journeyman electrician's certificate," which permits its holder to engage in the work of installing electric wires, conduits and appliances.

#### IX. DEVELOPMENT AND REGULATION OF HIGHWAYS AND WATERWAYS.

Massachusetts Highway Commission, established by chapter 476, Acts of 1893. Automobile department established by chapter 473, Acts of 1903.

Three members, appointed by the Governor and Council for terms of three years. Chairman's salary \$5,000 per year, other two members receive \$4,000 each per year.

Principal functions: to construct and maintain State highways and certain other highways; to register motor vehicles, license operators thereof, and investigate accidents connected therewith; to review local ordinances regulating the operation of such vehicles.

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Principal functions: to examine all persons who seek to practice medicine in this State; to investigate complaints of irregularities in medical practice, and, when necessary, refer cases to the proper prosecuting officers; to investigate the records of all physicians convicted of crime in connection with the practice of medicine, and for cause, after hearing, to revoke licenses to practice.

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Five members. Secretary of Board of Registration in Medicine is member *ex officio* and also secretary, other four members, three of whom must be trained nurses and one a superintendent of a hospital having a nurses' training school attached, appointed by the Governor and Council for terms of five years each. Secretary's salary \$1,500 per year, other four members not more than \$150 each per year.

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Principal functions: to construct and maintain State highways and certain other highways; to register motor vehicles, license operators thereof, and investigate accidents connected therewith; to review local ordinances regulating the operation of such vehicles.

Commission on Waterways and Public Lands, established by chapter 288, General Acts of 1916. Consolidation of former Board of Harbor and Land Commissioners and Board of Directors of the Port of Boston.

Three members, appointed by the Governor and Council for terms of three years. Chairman's salary \$4,500, other two members receive \$4,000 each per year.

Principal functions: to locate and mark boundaries of the Commonwealth and of towns; to administer water-front property of the Commonwealth, including the province lands at Provincetown; to regulate the use of harbors and tide waters and tidal flats; to maintain and improve harbors and channels; to compel removal of obstructions to navigation; to regulate in certain respects structures on the Connecticut River and great ponds; to keep maps, charts, etc., of waters and land in its charge; to develop and administer for commercial purposes the port of Boston.

#### X. DEVELOPMENT AND CONSERVATION OF NATURAL RESOURCES.

State Board of Agriculture, established by chapter 142, Acts of 1852.

Board of forty-one unpaid members, five of whom are *ex officio* (the Governor, the President of the Agricultural College, the State Forester, the Secretary of the Board of Agriculture, the Commissioner of Animal Industry), three are appointed by the Governor, thirty-one are chosen by incorporated agricultural societies, one is appointed by the State Federation of County Leagues of Farming, and one by the Society for Promoting Agriculture. The members are chosen for terms of three years. The management is vested in the secretary and three chiefs of bureaus elected by the Board for a term of one year. The secretary's salary is \$3,000 per year. Three members of the Board of Agriculture, designated by the Governor, act as members of the Dairy Bureau, at a salary of \$5 a day for each day of service.

Principal functions: to encourage agriculture, orcharding, dairying, poultry raising, beekeeping and the nursery business; to protect useful birds; to disseminate useful information among farmers, etc.; to enforce laws regarding adulteration of butter and oleomargarine; to reclaim wet lands.

Joint Board on Drainage Surveys, established by chapter 212, General Acts of 1917.

Composed of the State Board of Agriculture and the State Department of Health, acting jointly.

Principal functions: to investigate the question of the utilization of the wet lands in the Commonwealth, including meadows, swamps, marshes, beaches and other low lands, and to ascer-

tain what lands, if any, in the Commonwealth may be advantageously drained for agricultural and industrial uses, the protection of the public health, etc.; to publish and disseminate facts of general interest ascertained.

Department of Animal Industry, established by chapter 608, Acts of 1912, superseding the former Cattle Bureau of the State Board of Agriculture.

Commissioner, appointed by the Governor and Council for a term of three years, salary \$3,500 per year.

Principal function: to prevent and suppress contagious and infectious diseases among domestic animals.

Department of State Forester, established by chapter 409, Acts of 1914.

Forester, appointed by the Governor and Council for an indefinite term, salary \$5,000 per year.

Principal functions: to carry on general forestry work, including reforestation, examination of wood lots, advising owners of woodland, etc.; to suppress gypsy and brown-tail moths and other injurious insects; to prevent forest fires; to give annually a course of instruction in forestry to students of the Massachusetts Agricultural College.

State Forest Commission, created by chapter 720, Acts of 1914.

Three members, the State Forester *ex officio* and two others appointed by the Governor and Council for terms of six years, all unpaid.

Principal function: to acquire and hold land suitable for timber cultivation.

Commission on Fisheries and Game. A Board of Commissioners on Fisheries in the Merrimac and Connecticut rivers was established by chapter 238, Acts of 1866. It was made a Board of Commissioners on Inland Fisheries by chapter 384, Acts of 1869, and Game Commissioners by chapter 276, Acts of 1886.

Three members, appointed by the Governor and Council for terms of five years; chairman's salary \$3,000 per year, the other two members receive \$1,500 each per year.

Principal functions: to enforce laws relative to inland fisheries, closed seasons established for killing certain animals and birds, pollution of public waters, etc.; to conduct scientific investigations on fisheries and game.

#### XI. PUBLIC EDUCATION; COLLECTION AND DISTRIBUTION OF INFORMATION.

State Board of Education, established in its present form by chapter 457, Acts of 1909, succeeding the Board of Education established in 1837 and combining with it the Commission on Industrial Education established in 1906.

Nine members, unpaid, three appointed each year by the Governor and Council for terms of three years.

Commissioner, appointed by the Board for a term of five years, salary \$6,500 per year.

Two deputy commissioners, appointed by the Board.

Principal functions: to supervise and direct public education; to control State normal schools; to collect school statistics; to approve high schools receiving State aid; to grant certificates to teachers seeking positions in certain schools; to direct and control the University Extension department.

Normal Schools controlled by the State Board of Education.

Framingham Normal School: to train students for teaching in the first six grades of the public schools and as instructors in household arts; also as dietitians in private schools.

Westfield Normal School: to train students for teaching in the first six grades of the public schools.

Bridgewater Normal School: to train students for teaching in the public graded schools.

Salem Normal School: to train students for teaching in elementary schools and commercial courses in high schools.

Massachusetts Normal Art School: to train students for teaching industrial and practical arts, and for industrial designing, modeling and drafting.

Worcester Normal School: to train students for teaching in the first six grades of the public schools, in rural schools and in kindergartens; to give instruction in playground supervision.

Fitchburg Normal School: to train students for teaching in the public graded schools, also for teaching practical arts and music.

North Adams Normal School: to train students for teaching in elementary schools.

Hyannis Normal School: to train students for teaching in the first nine grades of the public schools, and to hold a summer session for normal and public school principals and teachers.

Lowell Normal School: to train students for teaching in the first six grades of the public schools.

Teachers' Retirement Board, established by chapter 832, Acts of 1913.

Board composed of seven unpaid members, the Insurance Commissioner, the Bank Commissioner, the Commissioner of Education *ex officio*, three persons elected by the Teachers' Retirement Association and one chosen by the other six members.

Principal function: to direct the accumulation and expenditure of the fund for the retirement of teachers in the public schools.

Massachusetts Agricultural College, authorized by chapter 220, Acts of 1863; located in Amherst.

Board of eighteen trustees, fourteen of whom are appointed by the Governor and Council, two each year, for terms of seven years each. The Governor, the secretary of the State Board of



Agriculture, the Commissioner of Education and the president of the college are members *ex officio*. The trustees are unpaid. The State Board of Agriculture is a board of overseers for the college, but they delegate this power to a committee of five of their own members.

Principal functions: to teach agriculture and related subjects by resident instruction and by extension courses; also to teach general subjects, including modern languages, literature, history, economics, etc.; to administer laws relative to the analysis and sale of fertilizers and manufactured foods for live stock; to conduct experiments in agriculture and allied subjects.

Massachusetts Nautical School, established by chapter 402, Acts of 1891.

Three unpaid commissioners, appointed by the Governor and Council, one each year, for a term of three years.

Principal function: to train young men in seamanship, navigation and marine engineering.

Trustees of the State Library. Library established by chapter 123, Acts of 1826.

A board of five unpaid trustees, of which the President of the Senate and the Speaker of the House are members *ex officio*, other three members appointed by the Governor and Council for terms of three years each.

Librarian, appointed by the Governor and Council to hold office indefinitely, salary \$4,000 per year.

Principal function: to provide a reference library for State officials and the General Court.

Board of Free Public Library Commissioners, established by chapter 347, Acts of 1890.

Board of five unpaid members, appointed by the Governor and Council for terms of five years.

Principal functions: to promote the establishment and efficiency of free public libraries; to aid public libraries in small towns; to provide for certain educational work for aliens.

Bureau of Statistics, established by chapter 102, Resolves of 1869.

Director, appointed by the Governor and Council for a term of three years, salary \$4,000 per year. Deputy appointed by Director, salary \$2,500 per year.

Principal functions: to collect and publish statistics relating to labor, manufactures, finances of cities and towns; to certify town and district notes; to install and audit accounts in cities and towns; to maintain free employment bureaus; to take certain censuses.

## XII. PUBLIC RECREATION.

Metropolitan Park Commission, established by chapter 407, Acts of 1893.

Five members, appointed by the Governor and Council, one each year, for a term of five years; chairman's salary \$4,500, each of the other members receives \$600 per year.

Principal functions: to acquire, lay out and maintain for public use reservations and parkways in the metropolitan district; to police such reservations; to provide accommodations for boating and bathing on its reservations; to make regulations governing the public use of the Charles River, Neponset River and Mystic River within the park districts, and of ponds and other waters along which it holds abutting land for public use.

Mount Greylock Reservation, acquired by the State in 1898.

Unpaid commission of three members, appointed by the Governor and Council for terms of six years.

Principal function: to care for and maintain the State reservation on Greylock Mountain.

Mount Wachusett State Reservation, acquired by the State in 1899.

Unpaid commission of three members, appointed by the Governor and Council for terms of six years.

Principal function: to care for and maintain State reservation on Wachusett Mountain.

Mount Tom Reservation (quasi-State), acquired by the State in 1903.

Unpaid commission of six members, namely, county commissioners of Hampshire and Hampden counties, acting jointly.

Principal function: to care for and maintain State reservation on Mount Tom.

Deer Hill Reservation (quasi-State), acquired by the State in 1907.

Unpaid commission of three members, namely, the county commissioners of Hampshire County, *ex officio*.

Principal function: to care for and maintain the State reservation on Deer Hill.

Mount Sugar Loaf Reservation (quasi-State), acquired by the State in 1907.

Unpaid commission of three members, namely, the county commissioners of Franklin County, *ex officio*.

Principal function: to care for and maintain the State reservation on Mount Sugar Loaf.

Mount Everett State Reservation, acquired by the State in 1908.

Unpaid commission of three members, appointed by the Governor and Council for six years.

Principal function: to care for and maintain the State reservation on Mount Everett.

## XIII. CARE OF PUBLIC CHARGES.

**State Board of Charity.** The Board of State Charities was created by chapter 240, Acts of 1863, passed April 29 of that year, and held its first meeting on Oct. 7, 1863. The Board of Health, Lunacy and Charity was created to replace the former Board April 30, 1879 (Acts of 1879, chapter 291). The State Board of Health was created as a separate organization by chapter 101, Acts of 1886 (March 24), and organized June 1 of the same year. From the resulting State Board of Lunacy and Charity the State Board of Insanity was separated by chapter 433 of the Acts of 1898, passed May 13 of that year. The State Board of Charity, as a result of this last statute, became an independent Board, the statute taking effect Oct. 1, 1898.

Nine unpaid members appointed by the Governor and Council for a term of five years.

**Principal functions:** to supervise and inspect State charitable institutions; to visit and inspect county training schools and local poor relief of persons without settlements; to maintain and care for delinquent, dependent and neglected children committed to it; to investigate the incorporation of private charities and to inspect such charities; to investigate settlements of paupers seeking State aid; to execute laws concerning abandoned infants and infant boarding houses; to license and supervise lying-in hospitals; to have direct control of Penikese Hospital, which treats and holds in custody persons afflicted with leprosy.

**Institutions over which the State Board of Charity has general supervision: —**

**Trustees of State Infirmary and State Farm.**

Unpaid board of seven members, two of whom must be women, appointed by the Governor and Council for three years.

**Principal functions:**

Of trustees: to control and direct the State Infirmary and State Farm.

Of State Infirmary: to care for and treat sick, disabled and insane State paupers.

Of State Farm: to care for State paupers; to hold in custody persons committed for minor offences and insane male criminals.

**Trustees of Massachusetts Training Schools.**

Unpaid board of nine members, two of whom must be women, appointed by the Governor and Council for five years.

**Principal functions:**

Of trustees: to control and direct the work of three training schools for juvenile delinquents and two probation departments for children on parole from the schools.

Of Lyman School for Boys: to hold in custody, care for and instruct delinquent boys under fifteen.

Of Industrial School for Boys: to hold in custody and instruct delinquent boys between fifteen and eighteen at time of commitment.

Of Industrial School for Girls: to hold in custody and instruct delinquent and wayward girls.

Of Boys' Parole Department: to place in families boys paroled from Lyman and Industrial Schools and to watch their conduct while on parole.

Of Girls' Parole Department: to place in families girls paroled from Industrial School, and to watch their conduct while on parole.

Trustees of Hospitals for Consumptives.

Unpaid board of seven members appointed by the Governor and Council for five years.

Principal functions:

Of trustees: to control and direct the four State sanatoria; to inspect tuberculosis hospitals applying for State subsidy; to carry on after-care work for discharged patients.

Of Rutland State Sanatorium: to care for and treat persons having pulmonary tuberculosis.

Of North Reading State Sanatorium: to care for and treat persons having pulmonary tuberculosis.

Of Lakeville State Sanatorium: to care for and treat persons having pulmonary tuberculosis.

Of Westfield State Sanatorium: to care for and treat persons having pulmonary tuberculosis.

Trustees of Norfolk State Hospital.

Unpaid board of seven members appointed by the Governor and Council for seven years.

Principal function: to control and direct the Norfolk State Hospital, which cares for and treats inebriates and drug habitués.

Trustees of Massachusetts Hospital School.

Unpaid board of five members appointed by the Governor and Council for five years.

Principal function: to control and direct the Massachusetts Hospital School established to care for, educate, and treat crippled and deformed children.

Commission on Mental Diseases, established by chapter 285, General Acts of 1916, superseding the State Board of Insanity.

Commission consists of a Director and four associate members. The Director is appointed for five years by the Governor and Council and receives a salary of not more than \$7,500 per year. One associate member is appointed each year for a term of four years. The associate members receive no compensation.

Principal functions: to exercise general supervision of all public and private institutions and receptacles for insane, feeble-minded or epileptic persons, or for persons addicted to the intemperate use of narcotics or stimulants, except the Norfolk State Hospital and the hospital cottages for children at Baldwinsville; to assume and exercise the powers of the board of trustees of any State institution under their supervision in any matter relative to the conduct or management thereof when so directed by the Governor; to exercise the same powers relative to State charges in institutions or other places under its supervision, and to their property, as are vested in towns and overseers of the poor in the matter of the support and relief of paupers; to visit every institution under its supervision at least once each year and to find out if the laws are obeyed; to grant licenses to private hospitals for the care of the insane, epileptic, feeble-minded and persons addicted to the intemperate use of narcotics or stimulants and to revoke same at any time.

Institutions over which the Commission on Mental Diseases has general supervision.

**Worcester State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane.

**Boston State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane persons, resident in Boston for ten years. Psychopathic Department: to conduct scientific study and research work as to the causes and treatment of insanity.

**Taunton State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane and female inebriates and drug habitués.

**Northampton State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane.

**Danvers State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane.

**Westborough State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat, on homeopathic principles, committed insane and female inebriates and drug habitués.

**Foxborough State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane.

**Medfield State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane.

**Grafton State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat committed insane.

**Gardner State Colony.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for, control and treat insane transferred from hospitals.

**Monson State Hospital.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to treat and care for epileptics.

**Massachusetts School for the Feeble-minded.**

Board of twelve unpaid trustees, six of whom are appointed by the Governor and Council for terms of six years, and six are appointed by the corporation of the institution.

Principal functions: to care for and control feeble-minded persons.

**Wrentham State School.**

Board of seven unpaid trustees, appointed by the Governor and Council for seven years.

Principal functions: to care for and control feeble-minded persons.

Land has been purchased for two other institutions to come under the supervision of the Commission on Mental Diseases, — a metropolitan hospital for the insane, to be located in Waltham, and a school for feeble-minded, to be located in Belchertown.

Commission for the Blind, established by chapter 385, Acts of 1906.

Five unpaid members, appointed by the Governor and Council for terms of five years each.

General superintendent, appointed by the Commission, salary \$2,000 per year.

Principal functions: to maintain bureaus of information and employment for blind workers; to operate workshops and sales-rooms; to carry on field work for the prevention of blindness; to keep a register of the blind within the State and to investigate their condition.

Bureau of Prisons, established by chapter 241, General Acts of 1916, superseding the Board of Prison Commissioners and two parole boards.

The Bureau consists of a Director of Prisons, appointed by the Governor and Council for three years, salary not to exceed \$6,000 per year; two deputies, appointed by the Director, salaries subject to the approval of the Governor and Council; an advisory prison board of five unpaid members, two of whom must be women, appointed by the Governor and Council for terms of five years; and a board of parole of three members, appointed by the Governor and Council for terms of three years, salary \$1,200 per year each, which also serves as an advisory board of pardons, the chairman receiving \$1,000 per year for his work on that board and the other two members \$600 per year.

Principal functions: to control and direct the State penal institutions; to release and transfer prisoners; to visit and inspect all prisons, reformatories, jails and houses of correction; to aid released prisoners; to grant parole to prisoners; to return to institutions prisoners who violate paroles; to advise the Governor as to the granting of pardons; to pass upon expenditures for industries in county prisons, jails, etc.

Penal Institutions controlled and directed by the Bureau of Prisons.

State Prison.

Principal function: to hold in custody convicted male felons sentenced to hard labor.

Massachusetts Reformatory.

Principal function: to hold in custody male criminals under forty years of age.

Reformatory for Women.

Principal function: to hold in custody women convicted of crime in the courts of the Commonwealth.

Prison Camp and Hospital.

Principal functions:

Camp section: to employ prisoners for reclaiming waste lands.

Hospital section: to segregate and care for tubercular prisoners.

## THE ORGANIZATION OF THE STATE GOVERNMENTS.

### A TABULAR SUMMARY OF THE STATE GOVERNMENTS.

#### *The Term and Salary of the Governors.*

STATE.	Term in Years.	Salary.	STATE.	Term in Years.	Salary.
ALABAMA, . . .	4	\$7,500	NEBRASKA, . . .	2	\$2,500
ARIZONA, . . .	2	4,000	NEVADA, . . .	4	7,000
ARKANSAS, . . .	2	5,000	NEW HAMPSHIRE, . .	2	3,000
CALIFORNIA, . . .	4	10,000	NEW JERSEY, . . .	3	10,000
COLORADO, . . .	2	5,000	NEW MEXICO, . . .	2	5,000
CONNECTICUT, . . .	2	5,000	NEW YORK, . . .	2	10,000
DELAWARE, . . .	4	4,000	NORTH CAROLINA, . .	4	5,000
FLORIDA, . . .	4	6,000	NORTH DAKOTA, . . .	2	5,000
GEORGIA, . . .	2	5,000	OHIO, . . .	2	10,000
IDAHO, . . .	2	5,000	OKLAHOMA, . . .	4	4,500
ILLINOIS, . . .	4	12,000	OREGON, . . .	4	5,000
INDIANA, . . .	4	8,000	PENNSYLVANIA, . . .	4	10,000
IOWA, . . .	2	5,000	RHODE ISLAND, . . .	2	3,000
KANSAS, . . .	2	5,000	SOUTH CAROLINA, . .	2	3,000
KENTUCKY, . . .	4	6,500	SOUTH DAKOTA, . . .	2	3,000
LOUISIANA, . . .	4	7,500	TENNESSEE, . . .	2	4,000
MAINE, . . .	2	5,000	TEXAS, . . .	2	4,000
MARYLAND, . . .	4	4,500	UTAH, . . .	4	6,000
MASSACHUSETTS, . . .	1	10,000	VERMONT, . . .	2	2,500
MICHIGAN, . . .	2	5,000	VIRGINIA, . . .	4	5,000
MINNESOTA, . . .	2	7,000	WASHINGTON, . . .	4	6,000
MISSISSIPPI, . . .	4	5,000	WEST VIRGINIA, . . .	4	5,000
MISSOURI, . . .	4	5,000	WISCONSIN, . . .	2	5,000
MONTANA, . . .	4	7,500	WYOMING, . . .	4	4,000



## THE STATE LEGISLATURES.

STATE.	NUMBER OF MEMBERS.		TERMS OF MEMBERS IN YEARS.		Annual, Quadrennial or Biennial Sessions.	Limit of Length of Session.	Salaries of Members.
	Senators.	Representatives.	Senators.	Representatives.			
ALABAMA, . . .	35	106	4	4	Quadrennial.	50 days.	\$4 per diem.
ARIZONA, . . .	19	35	2	2	Biennial.	60 days.	\$7 per diem.
ARKANSAS, . . .	34	99	4	2	Biennial.	60 days.	\$6 per diem.
CALIFORNIA, . . .	40	80	4	2	Biennial.	None.	\$1,000 per session.
COLORADO, . . .	35	65	4	2	Biennial.	90 days.	\$1,000 per session.
CONNECTICUT, . . .	35	258	2	2	Biennial.	5 mos. <sup>1</sup>	\$300 per session.
DELAWARE, . . .	17	35	4	2	Biennial.	60 days.	\$5 per diem.
FLORIDA, . . .	32	75	4	2	Biennial.	60 days.	\$6 per diem.
GEORGIA, . . .	44	175	2	2	Annual.	50 days.	\$4 per diem.
IDAHO, . . .	37	65	2	2	Biennial.	60 days.	\$5 per diem.
ILLINOIS, . . .	51	153	4	2	Biennial.	None.	\$3,550 for two years.
INDIANA, . . .	50	100	4	2	Biennial.	61 days.	\$6 per diem.
IOWA, . . .	50	108	4	2	Biennial.	None.	\$1,000 per session.
KANSAS, . . .	40	125	4	2	Biennial.	50 days.	\$3 per diem.
KENTUCKY, . . .	38	100	4	2	Biennial.	60 days.	\$10 per diem.
LOUISIANA, . . .	42	118	4	4	Biennial.	60 days.	\$5 per diem.
MAINE, . . .	31	151	2	2	Biennial.	None.	\$400 per session.
MARYLAND, . . .	27	102	4	2	Biennial.	90 days.	\$5 per diem.
MASSACHUSETTS, . . .	40	240	1	1	Annual.	None.	\$1,000 annually.
MICHIGAN, . . .	32	100	2	2	Biennial.	None.	\$800 per session.
MINNESOTA, . . .	67	130	4	2	Biennial.	90 days.	\$1,000 per session.
MISSISSIPPI, <sup>2</sup> . . .	45	136	4	4	Biennial.	None.	\$500 per session.
MISSOURI, . . .	34	142	4	2	Biennial.	70 days.	\$5 per diem.
MONTANA, . . .	41	95	4	2	Biennial.	60 days.	\$10 per diem.
NEBRASKA, . . .	33	100	2	2	Biennial.	60 days.	\$10 per diem.
NEVADA, . . .	22	53	4	2	Biennial.	60 days.	\$10 per diem.
NEW HAMPSHIRE, . . .	24	404	2	2	Biennial.	None.	\$200 per session.
NEW JERSEY, . . .	21	60	3	1	Annual.	None.	\$500 annually. <sup>3</sup>
NEW MEXICO, . . .	24	49	4	2	Biennial.	60 days.	\$5 per diem.

<sup>1</sup> First Wednesday after first Monday in June.<sup>2</sup> "Quadrennial, beginning 1892, regular session," unlimited as to length, with special sessions midway limited to 30 days unless extended by Governor.<sup>3</sup> All the States pay mileage also, except New Jersey, where free transportation is furnished by the railroads.

## THE STATE LEGISLATURES — Concluded.

STATE.	NUMBER OF MEMBERS.		TERMS OF MEMBERS IN YEARS.		Annual, Quadrennial or Biennial Sessions.	Limit of Length of Session.	Salaries of Members.
	Senators.	Representatives.	Senators.	Representatives.			
NEW YORK, . . .	51	150	2	1	Annual.	None.	\$1,500 per annum.
NORTH CAROLINA, .	50	120	2	2	Biennial.	60 days.	\$4 per diem.
NORTH DAKOTA, . .	49	113	4	2	Biennial.	60 days.	\$5 per diem.
OHIO, . . .	36	128	2	2	Biennial.	None.	\$1,000 per annum.
OKLAHOMA, . . .	44	111	4	2	Biennial.	60 days.	\$6 per diem.
OREGON, . . .	30	60	4	2	Biennial.	40 days.	\$3 per diem.
PENNSYLVANIA, . .	50	207	4	2	Biennial.	None.	\$1,550 per session.
RHODE ISLAND, . .	39	100	2	2	Annual.	60 days.	\$5 per diem.
SOUTH CAROLINA, .	44	124	4	2	Annual.	40 days.	\$200 per session.
SOUTH DAKOTA, . .	45	103	2	2	Biennial.	60 days.	\$5 per diem.
TENNESSEE, . . .	33	99	2	2	Biennial.	75 days.	\$4 per diem.
TEXAS, . . .	31	147	4	2	Biennial.	60 days.	\$5 per diem.
UTAH, . . .	18	46	4	2	Biennial.	60 days.	\$4 per diem.
VERMONT, . . .	30	246	2	2	Biennial.	None.	\$4 per diem.
VIRGINIA, . . .	40	100	4	2	Biennial.	60 days.	\$500 per session.
WASHINGTON, . . .	42	97	4	2	Biennial.	60 days.	\$5 per diem.
WEST VIRGINIA, . .	30	94	4	2	Biennial.	45 days.	\$4 per diem.
WISCONSIN, . . .	33	100	4	2	Biennial.	None.	\$500 per session.
WYOMING, . . .	27	57	4	2	Biennial.	40 days.	\$8 per diem.

## THE STATE JUDICIARY.

STATE.	Name.	Salaries.	Terms.	Number of Judges.	How chosen.
ALABAMA, . .	Supreme Court, .	\$5,000	6 years.	7	Elected.
ARIZONA, . .	Supreme Court, .	5,000	6 years.	3	Elected.
ARKANSAS, . .	Supreme Court, .	4,000	8 years.	5	Elected.
CALIFORNIA, . .	Supreme Court, .	8,000	12 years.	7	Elected.
COLORADO, . .	Supreme Court, .	5,000	6 years.	7	Elected.
CONNECTICUT, .	Court of Errors, .	8,000	8 years.	5	Governor and Legislature.
DELAWARE, . .	Court of Errors and Appeals.	5,000	12 years.	6	Governor and Senate.
FLORIDA, . .	Supreme Court, .	4,500	6 years.	5	Elected.
GEORGIA, . .	Supreme Court, .	4,000	6 years.	6	Elected.
IDAHO, . .	Supreme Court, .	5,000	6 years.	3	Elected.
ILLINOIS, . .	Supreme Court, .	10,000	9 years.	7	Elected.
INDIANA, . .	Supreme Court, .	6,000	6 years.	5	Elected.
IOWA, . .	Supreme Court, .	6,000	6 years.	7	Elected.
KANSAS, . .	Supreme Court, .	4,000	6 years.	7	Elected.
KENTUCKY, . .	Court of Appeals,	5,000	8 years.	7	Elected by districts.
LOUISIANA, . .	Supreme Court, .	6,000	12 years.	5	Elected.
MAINE, . .	Supreme Court, .	5,000	7 years.	8	Governor and Council.
MARYLAND, . .	Court of Appeals,	6,800	15 years.	8	Elected by districts.
MASSACHUSETTS, .	Supreme Judicial Court.	$\left\{ \begin{array}{l} 10,500 \\ 10,000 \end{array} \right\}$	- <sup>1</sup>	7	Governor and Council.
MICHIGAN, . .	Supreme Court, .	7,000	8 years.	8	Elected.
MINNESOTA, . .	Supreme Court, .	7,000	6 years.	5	Elected.
MISSISSIPPI, . .	Supreme Court, .	4,500	8 years.	6	Elected.
MISSOURI, . .	Supreme Court, .	7,500	10 years.	7	Elected.
MONTANA, . .	Supreme Court, .	6,000	6 years.	3	Elected.
NEBRASKA, . .	Supreme Court, .	4,500	6 years.	7	Elected.
NEVADA, . .	Supreme Court, .	6,000	6 years.	3	Elected.
NEW HAMPSHIRE, .	Supreme Court, .	$\left\{ \begin{array}{l} 4,500 \\ 4,000 \\ 13,000 \end{array} \right\}$	- <sup>2</sup>	5	Governor and Council.
NEW JERSEY, . .	Court of Errors and Appeals.	$\left\{ \begin{array}{l} 12,000 \end{array} \right\}$	7 years.	16	Governor and Senate.
NEW MEXICO, . .	Supreme Court, .	6,000	8 years.	3	Elected.
NEW YORK, . .	Court of Appeals,	$\left\{ \begin{array}{l} 14,200 \\ 13,700 \end{array} \right\}$	14 years.	7	Elected.
NORTH CAROLINA, .	Supreme Court, .	4,650	8 years.	5	Elected.
NORTH DAKOTA, .	Supreme Court, .	5,000	10 years.	5	Elected.

<sup>1</sup> During good behavior.<sup>2</sup> Until 70 years of age.

## THE STATE JUDICIARY — Concluded.

STATE.	Name.	Salaries.	Terms.	Number of Judges.	How chosen.
OHIO, . . .	Supreme Court, .	\$6,500	6 years.	7	Elected.
OKLAHOMA, . .	Supreme Court, .	4,000	6 years.	5	Elected.
OREGON, . . .	Supreme Court, .	4,500	6 years.	5	Elected.
PENNSYLVANIA, .	Supreme Court, .	{ 13,500 13,000 }	21 years.	7	Elected.
RHODE ISLAND, .	Supreme Court, .	6,000	- <sup>1</sup>	5	Legislature.
SOUTH CAROLINA, .	Supreme Court, .	3,000	10 years.	5	Legislature.
SOUTH DAKOTA, .	Supreme Court, .	3,000	6 years.	5	Elected.
TENNESSEE, . .	Supreme Court, .	5,000	8 years.	5	Elected.
TEXAS, . . .	Supreme Court, .	5,000	6 years.	3	Elected.
UTAH, . . .	Supreme Court, .	5,000	6 years.	3	Elected.
VERMONT, . . .	Supreme Court, .	4,000	2 years.	5	Legislature.
VIRGINIA, . . .	Supreme Court of Appeals.	{ 5,200 5,000 }	12 years.	5	Legislature.
WASHINGTON, .	Supreme Court, .	6,000	6 years.	9	Elected.
WEST VIRGINIA, .	Supreme Court of Appeals.	5,500	12 years.	5	Elected.
WISCONSIN, . .	Supreme Court, .	7,500	10 years.	7	Elected.
WYOMING, . . .	Supreme Court, .	5,000	8 years.	3	Elected.

<sup>1</sup> Until removed by Legislature.

## RULES OF PROCEDURE OF THE CONSTITUTIONAL CONVENTION OF 1779-1780.

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RULES AND ORDERS TO BE OBSERVED BY THE CONVENTION HELD AT CAMBRIDGE, FOR THE PURPOSE OF FRAMING A NEW CONSTITUTION OF GOVERNMENT FOR THE STATE OF MASSACHUSETTS BAY, AGREEABLE TO THEIR VOTE OF THE 2D SEPTEMBER, 1779.

*1st.* The seat now occupied by any member shall be the seat of such member, during the Sitting of this Convention, unless such seat has previously been taken possession of by another Member.

*2dly.* No member shall speak more than twice to any question, without leave expressly obtained; nor more than once, until others, who have not spoken, shall have delivered their sentiments, if they shall desire it.

*3dly.* Any member, rising to speak, shall address himself to the President, and as soon as he has done speaking, he shall sit down.

*4thly.* No member speaking shall be interrupted by another, unless it be by calling to order, or to correct a mistake with respect to matter of fact; and no member shall stand up to the interruption of any one speaking, or to hinder other members from hearing the Delegates, or what is read by the President.

*5thly.* No member shall declare or scruple any vote, until the President shall have made his declaration thereon.

*6thly.* It shall be the duty of the Monitors to keep good order in the Convention, and when any vote is questioned, to make return of the numbers in their respective quarters or divisions, voting for or against the motion proposed.

*7thly.* When a motion shall be made by any member, and seconded by some other member, the same shall be considered as before the Convention, but not otherwise.

*8thly.* When a Vote is scrupled, it shall be determined by the numbers voting in the affirmative, and the numbers present in the Convention, unless any member shall be excused giving his Vote by the Convention.

*9thly.* No member shall nominate more than one person for one Committee, provided the person by him first nominated be chosen.

*10thly.* No Vote shall be reconsidered, unless there be as many of the members in the Convention, at the time of reconsideration, as there were when it was passed.

## RULES OF PROCEDURE OF THE CONSTITUTIONAL CONVENTION OF 1820.

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RULES AND ORDERS TO BE OBSERVED IN THE CONVENTION OF DELEGATES FOR THE COMMONWEALTH OF MASSACHUSETTS, MET ON WEDNESDAY, THE 15TH OF NOVEMBER, 1820.

### CHAPTER I.

#### *Of the Duties and Powers of the President.*

SECT. 1. The President shall take the chair every day, precisely at the hour to which the Convention may have adjourned; shall call the members to order, and on the appearance of a quorum, shall cause the journal of the preceding day to be read and proceed to business.

SECT. 2. He shall preserve decorum and order; he may speak to points of order in preference to other members, and shall decide all questions of order subject to an appeal to the Convention, on motion of any member regularly seconded.

SECT. 3. He shall declare all votes; but if any one member doubts the vote, the President shall order a return of the convention, with the numbers voting in the affirmative and in the negative, and shall declare the result.

SECT. 4. He shall rise to put a question or address the Convention, but may read sitting.

SECT. 5. In all cases, the President may vote.

SECT. 6. When the Convention shall determine to go into a committee of the whole, the President shall appoint the member who shall take the chair.

SECT. 7. When any member shall require a question to be determined by yeas and nays, the President shall take the sense of the Convention in that manner, provided that one fifth of the members present are in favor of it.

SECT. 8. He shall propound all questions, in the order they were moved, unless the subsequent motion shall be previous in its nature; except that in naming sums and fixing times, the largest sum and the longest time shall be first put.

SECT. 9. After a motion, being seconded, is stated or read by the President, it shall be deemed to be in possession of the Convention, and shall be disposed of by vote of the Convention; but the mover may withdraw it at any time before a decision or amendment.

SECT. 10. When a question is under debate, no motion shall be received but to adjourn, — to lay on the table, — for the previous question, — to postpone indefinitely, — to postpone to a day certain, — to commit, or — to amend; which several motions shall have precedence, in the order in which they stand arranged.

SECT. 11. The President shall consider a motion to adjourn as always in order, and it shall be decided without debate.

SECT. 12. He shall put the previous question in the following form, "shall the main question be now put," and all amendments or further debate of the main question shall be suspended, until the previous question be decided; and the previous question shall not be put, unless a majority of the members present are in favor of it.

SECT. 13. When two or more members happen to rise at once, the President shall name the member who is first to speak.

SECT. 14. All committees, except such as the Convention shall from time to time determine to select by ballot, shall be nominated by the President.

SECT. 15. The President shall have the general direction of the Hall of the Convention, and of the Galleries. No person excepting members, officers and attendants of the Convention and such persons as may be invited by the Convention, or by the President shall be admitted within the Hall. The chairman of each committee of the whole, during the sitting of such committee, shall have the like power of preserving order in the hall and in the galleries.



## CHAPTER II.

*Of the Rights, Duties and Decorum of Members.*

SECT. 1. When any member is about to speak in debate or deliver any matter to the Convention, he shall rise and respectfully address the President; he shall confine himself to the question under debate, and avoid personality. He shall sit down as soon as he has done speaking.

SECT. 2. No member in debate shall mention a member then present by his name, but may describe him by the town he represents, the place he sits in, or such other designations as may be intelligible and respectful.

SECT. 3. No member speaking shall be interrupted by another, but by rising up to call to order, or to correct a mistake. But if any member in speaking or otherwise, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case, the member so called to order, shall immediately sit down unless permitted to explain, and the Convention shall, if appealed to, decide on the case, but without debate; if there be no appeal, the decision of the chair shall be submitted to.

SECT. 4. No member shall speak more than twice to the same question, without first obtaining leave of the Convention, nor more than once, until all other members desiring to speak, shall have spoken.

SECT. 5. When any member shall make a motion, and such motion shall be seconded by another, the same shall be received and considered by the Convention, and not otherwise; and no member shall be permitted to lay a motion in writing on the table, until he has read the same in his place, and the same has been seconded.

SECT. 6. Every motion shall be reduced to writing if the President direct it, or at the request of any member of the Convention.

(SECT. 7, not accepted but recommitted.)

SECT. 8. No member shall be permitted to stand up to the interruption of another, whilst any member is speaking, or pass unnecessarily between the President and the person speaking.

SECT. 9. When a vote is declared by the President, and any

member rises to doubt the vote, the Convention shall be returned and the vote made certain, without any further debate upon the question.

SECT. 10. Every member neglecting to give his attendance in Convention for more than six days after the commencement of the session, shall be held to render the reason of such neglect; and in case the reason assigned shall be deemed sufficient, such member shall be entitled to receive pay for his travel, but not otherwise. No member shall be absent more than two days without leave of the Convention, and no leave of absence shall avail any member, who retains his seat more than five days from the time the same was obtained.

SECT. 11. All papers relative to any business before the Convention shall be left with the secretary, by any member who may obtain leave of absence, having such papers in his possession.

SECT. 12. When any member shall violate any of the rules and orders of the Convention, and the Convention shall have determined that he has so transgressed, he shall not be allowed to speak or vote, until he has made satisfaction, unless by way of excuse for the same.

SECT. 13. Every member who shall be in the Convention when a question is put, shall give his vote, unless the Convention, for special reasons, shall excuse him.

SECT. 14. On a previous question, no member shall speak more than once, without leave.

SECT. 15. A motion for commitment, until it is decided, shall preclude all amendment of the main question.

SECT. 16. All motions and reports may be committed or recommitted, at the pleasure of the Convention.

SECT. 17. The division of a question may be called for, where the sense will admit of it; but a question to strike out and insert shall be deemed indivisible.

SECT. 18. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the Convention.

SECT. 19. The unfinished business, in which the Convention was engaged at the time of the last adjournment, shall have the preference in the orders of the day, and no motion or any

other business shall be received without special leave of the Convention, until the former is disposed of.

SECT. 20. No standing rule or order of the Convention shall be rescinded or changed, without one day's notice being given of the motion therefor.

SECT. 21. When a vote is doubted, the members for or against the question, when called on by the President, shall rise and stand uncovered, until they are counted.

### CHAPTER III.

#### *Of the Appointment and Duties of Monitors.*

SECT. 1. One Monitor shall be appointed by the President for each division of the Convention, whose duty it shall be to see the due observance of the orders of the Convention, and on demand of the President, or of the chairman in committee of the whole, to return the number of votes and members in their respective divisions.

SECT. 2. If any member shall transgress any of the rules or orders of the Convention, and shall persist therein after being notified thereof by any Monitor, it shall be the duty of such Monitor to give information thereof to the Convention.

SECT. 3. In case the President shall be absent at the hour to which the Convention stands adjourned, the Secretary shall call the Convention to order, and shall preside until a President *pro tempore* shall be chosen, which shall be the first business of the Convention.

### CHAPTER IV.

#### *Of Communications, Committees, Reports, and Resolutions.*

SECT. 1. All memorials and other papers, addressed to the Convention, shall be presented by the President, or by a member in his place, and shall lie on the table, to be taken up in the order in which they were presented, unless the Convention shall otherwise direct.

SECT. 2. No committee shall sit, during the sitting of the Convention, without special leave.

SECT. 3. The rules of proceeding in Convention shall be observed in a committee of the whole, so far as they may be

applicable, excepting the rule limiting the times of speaking; but no member shall speak twice to any question, until every member choosing to speak shall have spoken.

SECT. 4. Every motion or resolution, which proposes an alteration in the constitution, and all reports of Committees, appointed to consider the propriety and expediency of making any alteration therein, shall be discussed in committee of the whole, before they are debated and finally acted upon in Convention.

SECT. 5. Every resolution of the Convention, proposing any alteration in the constitution, shall be read on two several days, before it is finally acted upon and adopted by the Convention.

SECT. 6. In all elections by ballot, of committees of the Convention the person having the highest number of votes shall act as chairman; and when the committee is nominated by the Chair, the person first named shall be chairman.

## RULES OF PROCEDURE OF THE CONSTITUTIONAL CONVENTION OF 1853.

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### RULES AND ORDERS.

#### OF THE PRESIDENT.

1. The President shall take the chair every day at the hour to which the Convention shall have adjourned; shall call the members to order; and on the appearance of a quorum, shall cause the Journal of the preceding day to be read, and proceed to business.

2. He shall preserve decorum and order; may speak to points of order in preference to other members; and shall decide all questions of order, subject to an appeal to the Convention on motion regularly seconded; and no other business shall be in order till the question on the appeal shall have been decided.

3. He shall declare all votes; but if any member doubts a vote, the President shall order a return of the number voting in the affirmative, and in the negative, without any further debate upon the question. When a vote is doubted, the members for or against the question, when called by the President, shall rise and stand uncovered till they are counted.

4. He shall rise to put a question, or to address the Convention, but may read sitting.

5. In all cases the President may vote.

6. When the Convention shall determine to go into Committee of the Whole, the President shall appoint the member who shall take the chair.

7. On all questions and motions whatsoever, the President shall take the sense of the Convention by yeas and nays, provided one-fifth of the members present shall so require. When the yeas and nays are taken, no member shall be allowed to vote, who shall have entered the Convention after the calling of the roll is finished. The names of members shall be called in alphabetical order.

8. He shall propound all questions, in the order in which they are moved, unless the subsequent motion be previous in its nature; except that, in naming sums and fixing times, the largest sum and the longest time shall be put first.

9. After a motion is stated or read by the President, it shall be deemed to be in possession of the Convention, and shall be disposed of by vote of the Convention; but the mover may withdraw it at any time before a decision or amendment, except a motion to reconsider, which shall not be withdrawn after the time has elapsed within which it could be originally made.

10. When a question is under debate the President shall receive no motion, but to adjourn, to lay on the table, for the previous question, to postpone to a day certain, to commit, to amend, or to postpone indefinitely; which several motions shall have precedence in the order in which they stand arranged.

11. He shall consider a motion to adjourn as always in order; and that motion, and the motions to lay on the table, to take up from the table, to suspend any rule, and for the yeas and nays, shall be decided without debate.

12. He shall put the previous question in the following form: "*Shall the main question be now put?*" — and all debate upon the main question shall be suspended until the previous question shall be decided. After the adoption of the previous question, the sense of the Convention shall forthwith be taken upon amendments reported by a committee, upon pending amendments, and then upon the main question.

13. On the previous question no member shall speak more than once without leave; and all incidental questions of order, arising after a motion is made for the previous question, shall be decided without debate, excepting on appeal, and on such appeal, no member shall be allowed to speak more than once without leave of the House.

14. When two or more members happen to rise at once, the President shall name the member who is first to speak.

15. All committees shall be appointed and announced by the President, unless otherwise specially directed by the Convention.

16. The President shall have the right to name any member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment.

17. The President shall have the general direction of the hall of the Convention, and of the galleries. No person excepting members, officers, and attendants of the Convention, and such persons as may be invited by the Convention, or by the President, shall be admitted within the bar of the Convention. The chairman of each Committee of the Whole, during the sitting of such committee, shall have the like power of preserving order in the hall and in the galleries.

#### OF ABSENCE OF PRESIDENT.

18. In case the President shall be absent at the hour to which the Convention was adjourned, the Secretary shall call the Convention to order, and shall preside until a President *pro tempore* shall be elected, which shall be the first business of the Convention.

#### OF MEMBERS.

19. A seat shall be assigned to each member in such a manner as the Convention shall determine, which shall not be changed without leave of the President.

20. No member in debate shall mention a member then present by his name, but may describe him by the town he represents, the place he sits in, or such other designations as may be intelligible and respectful.

21. Every member when about to speak, shall rise and respectfully address the President, shall confine himself to the question under debate, and avoid personality, and shall sit down when he has finished. No member shall speak out of his place without leave of the President.

22. No member speaking shall be interrupted by another, but by rising up to call to order.

23. No member shall speak more than twice on one question, without first obtaining leave of the Convention; nor more than once, until other members, who have not spoken, shall speak, if they desire it.

#### OF RECONSIDERATION.

24. When a vote has passed, it shall be in order for any member to move for a reconsideration thereof, on the same or the succeeding day, and such motion shall be placed first in the

Orders of the Day for the day succeeding that on which the motion is made: a motion to reconsider being rejected shall not be renewed; nor shall any subject be a second time reconsidered: *provided, however*, that a motion to reconsider a vote, upon any collateral matter, shall not remove the main subject under consideration from before the Convention, but shall be considered, at the time when it is made.

25. No member shall be obliged to be on more than two committees at the same time, nor chairman of more than one.

26. No member shall be permitted to stand up, to the interruption of another, while any member is speaking, or to pass unnecessarily between the President of the Convention and the person speaking; nor shall any member be permitted to stand in the alleys during the session of the Convention.

27. Every member shall keep an account of his own attendance and travel, and deliver the same to the committee appointed to make up the pay roll, and on his failure so to do, he shall be omitted from the roll; and no member shall receive pay for any weekday on which he has not actually attended, except in case of sickness.

28. Every member who shall neglect to give his attendance in the Convention for more than six days after the session commences, shall, on making his appearance therein, be held to render the reason of such neglect; and in case the reason assigned shall be deemed by the Convention sufficient, such member shall be entitled to receive pay for his travel, and not otherwise; and no member shall be absent more than two days, without leave of the Convention; and a vote of leave of absence shall be inoperative, unless the member obtaining it shall avail himself of it within five days.

29. When any member shall be guilty of a breach of either of the Rules and Orders of the Convention, he may be required by the Convention, on motion, to make satisfaction therefor, and shall not be allowed to vote, or speak, except by way of excuse, till he has done so.

30. Every member, who shall be in the Convention when a question is put, shall give his vote, unless the Convention, for special reasons, shall excuse him. Any member desiring to be so excused on any question, shall make application to that



effect before a division, or before the calling of the yeas and nays; and such application shall be accompanied by a brief statement of reasons, and shall be decided without debate.

31. Every motion shall be reduced to writing, if the President shall so direct.

32. Any member may call for the division of a question when the sense will admit of it. A motion to strike out and insert shall be deemed indivisible; but a motion to strike out being lost, shall neither preclude amendment, nor a motion to strike out and insert.

33. Motions and reports may be committed, or recommitted, at the pleasure of the Convention.

34. No motion or proposition of a subject different from that under consideration, shall be admitted under color of amendment.

35. The unfinished business in which the Convention was engaged at the time of the last adjournment, shall have the preference in the Orders of the Day.

36. No rule or order of the Convention shall be dispensed with, altered, or repealed, unless two-thirds of the members present shall consent thereto.

37. All questions relating to the priority of business to be acted upon, shall be decided without debate.

38. Every question of order shall be noted by the Secretary, with the decision thereon, and inscribed at large on the Journal.

39. It shall be the duty of each member who moves that any committee be instructed to inquire into the expediency of amending the existing Constitution, to point out the amendment which he deems expedient, in writing, to accompany his motion, or to furnish a written statement thereof to such committee, if by them required.

#### OF MONITORS.

40. Two Monitors shall be appointed for each division, whose duty it shall be to see the due observance of the Rules and Orders of the Convention, and on demand of the President, to return the number of votes and members in their respective divisions.

41. If any member shall transgress any of the Rules or Orders of the Convention, and persist therein after being notified thereof by any Monitor, it shall be the duty of such Monitor to give information thereof to the Convention.

#### OF PETITIONS, MEMORIALS, &C.

42. All papers addressed to the Convention, except petitions, memorials and remonstrances, shall be presented by the President, or by a member in his place, and shall be read by the President, Secretary, or such other person as the President may request, and shall be taken up in the order in which they were presented, unless where the Convention shall otherwise direct.

43. Every member, presenting to the Convention a petition, memorial, or remonstrance, shall endorse his name thereon, with a brief statement of the nature and object of the instrument, and the reading of the same from the chair shall in all instances be dispensed with, unless specially ordered by the Convention.

44. All reports, petitions, memorials, remonstrances, and papers of a like nature, shall be presented during the first hour of each session, and at no other time, except by special leave of the Convention.

45. If any member of the Convention shall so request, any order, which shall be proposed for adoption, shall be passed over for that day without question; and the same shall be considered and disposed of, on the succeeding day, in the same manner as it would have been on the day on which it was offered, if no objection had been made.

#### OF QUORUM.

46. Not less than one hundred members shall constitute a quorum for the transaction of business.

#### OF COMMITTEES, REPORTS, AND RESOLUTIONS.

47. No committee shall sit during the sessions of the Convention, without special leave.

48. In all elections, by ballot, of the Convention, a time shall be assigned for such election at least one day previous thereto.

49. In all elections of committees of the Convention, by ballot, the person having the highest number of votes shall act as chairman, and when the committee is nominated by the Chair, the member first named shall be chairman.

50. All papers, relative to any business before the Convention, shall be left with the Secretary, by any member, who may obtain leave of absence, and may have any such papers in his possession.

51. The rules of proceeding in the Convention shall be observed in a Committee of the Whole, so far as they may be applicable, except the rule limiting the times of speaking: but no member shall speak twice upon any question, until every member, who shall not have spoken, shall speak, if he desires it. A motion to rise, report progress, and ask leave to sit again, shall be always first in order, and shall be decided without debate.

52. Every order or resolution which proposes an alteration in the Constitution, and all reports of committees appointed to consider the propriety and expediency of making any alteration therein, shall be considered in Committee of the Whole before they are debated and finally acted upon in Convention.

53. Every resolution proposing any alteration in the Constitution, shall be read on two several days before it is finally acted upon and adopted by the Convention.

## RULES OF PROCEDURE OF THE CONSTITUTIONAL CONVENTION OF 1917.

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### THE PRESIDENT.

1. The President shall take the chair at the hour to which the Convention is adjourned; shall call the members to order; and on the appearance of a quorum shall proceed to business.

2. He shall preserve order; may speak to points of order; and shall decide all questions of order, subject to an appeal to the Convention, if seconded, and no other business shall be in order until the question on the appeal shall have been decided.

3. He shall declare all votes; but if any member doubts a vote he shall order a return of the number voting in the affirmative and in the negative, without further debate. When a vote is doubted, the members for or against the question, when called by the President, shall rise and stand until counted.

4. He shall rise to put a question, or to address the Convention, but may read sitting. In all cases he may vote.

5. He may require any motion to be reduced to writing.

6. When two or more members rise at once he shall name the member who is to speak first.

7. He may name a member to perform the duties of the Chair, but such substitution shall not extend beyond three days.

8. If the President or the member appointed to the chair shall be absent at the hour to which the Convention is adjourned, the Secretary shall call the Convention to order and shall preside until a President pro tempore is elected, which shall be the first business.

9. The President shall have the general control of the Convention Chamber and galleries and the rooms adjoining. No person, excepting members, officers and attendants of the Convention, and such persons as may be invited by the Convention or by the President, shall be admitted within the bar. The chairman of the Committee of the Whole, during the sitting of such committee, shall have like powers.

## MONITORS.

10. The President shall appoint two monitors for each division, whose duty it shall be to see that the rules and orders are duly observed, and, on demand of the President, to return the number of votes or members in their respective divisions.

## SECRETARY.

11. The Secretary shall enter in the Journal of the Convention a record of its proceedings, and shall prepare a Calendar of matters in order for consideration, matters lying on the table, and such other memoranda as the Convention or the President may direct, each to be printed daily.

12. Every question of order shall be noted by the Secretary, with the decision thereon, and shall be entered at large in the Journal.

## MEMBERS.

13. No member shall be absent more than two days without leave of the Convention, nor absent himself from the Convention without leave unless there be a quorum without his presence. When it appears to the President that the presence of a quorum is endangered, he shall order the doors closed until the Convention takes action thereon.

14. Every member present in the Convention when a question is put shall give his vote, unless the Convention for special reason shall excuse him. A member desiring to be excused shall make application therefor, with a brief statement of his reasons, before a division or before the calling of the yeas and nays, and the same shall be decided without debate. The pairing of members shall not be recognized.

15. Every member, when about to speak, shall rise and address the President, shall confine himself to the question under debate, and avoid personalities. No member shall speak out of his place without leave of the President, and upon the taking of any vote the President may require that all members shall resume and remain in their places until final verification of the vote.

16. No member speaking shall be interrupted by another but by rising to call to order.

17. No member shall mention in debate another member by his name, but may describe him by such designation as may be intelligible and respectful.

18. No member shall speak more than twice on one question without first obtaining leave of the Convention, nor more than once until other members who have not spoken shall speak, if they desire it.

19. No member shall be permitted to stand, to the interruption of another, while any member is speaking, nor to pass unnecessarily between the President and the member speaking, nor shall any member be permitted to stand in the aisles or the area in front of the President's desk during the session of the Convention, nor to stand at the Secretary's desk during a roll call.

20. When any member shall be guilty of a breach of any rule or order of the Convention, he may be required, on motion, to make satisfaction therefor, and shall not be allowed to vote or speak, except by way of excuse, until he has so done.

21. All papers belonging to the Convention, in the possession of a member obtaining leave of absence, shall be left by him with the Secretary.

#### QUORUM.

22. One hundred and sixty-one members present in the Convention Chamber shall constitute a quorum for the transaction of business, but a motion to go into Committee of the Whole may be entertained whenever one hundred members are present.

#### COMMITTEES.

23. Standing committees shall be appointed as follows: —

- 1 A committee on Rules and Procedure, to consist of the President, who shall be chairman of the committee, and eighteen other members.
- 2 A committee on Bill of Rights;
- 3 A committee on The General Court;
- 4 A committee on Initiative and Referendum;
- 5 A committee on Suffrage;

- 6 A committee on State Finance;
- 7 A committee on Taxation;
- 8 A committee on Public Affairs;
- 9 A committee on Social Welfare;
- 10 A committee on Labor;
- 11 A committee on the Liquor Traffic;
- 12 A committee on Social Insurance;
- 13 A committee on the Executive;
- 14 A committee on State Administration;
- 15 A committee on Municipal Government;
- 16 A committee on County and District Government;
- 17 A committee on Military Affairs;
- 18 A committee on the Judiciary;
- 19 A committee on Judicial Procedure;
- 20 A committee on Education;
- 21 A committee on Amendment and Codification of the Constitution;

Each to consist of fifteen members.

- 22 A committee on Elections, to consist of nine members.
  - 23 A committee on Contingent Expenses and Pay-Roll;
  - 24 A committee on Form and Phraseology;
- Each to consist of five members.

24. All committees shall be appointed by the President, unless otherwise ordered by the Convention, and the member first named shall be chairman.

25. With the approval of the committee on Rules and Procedure a committee may originate, without specific reference, any proposal for amendment of the Constitution which falls within the proper province of such committee.

26. A proposal for amendment of the Constitution reported by a committee, based on a specific reference or references, shall not be open to the point of order that it contains matter not within the scope of the reference.

27. All committees appointed to consider proposals to amend the Constitution shall file their reports with the Secretary before five o'clock P.M., July 16, 1917, and such reports shall be referred by the President to the Committee of the Whole, where they shall be considered before they are acted upon by the Convention.

28. Proposals to amend the Constitution in their third reading shall be referred to the committee on Form and Phraseology for examination, correction and report. When a proposal has been so referred it shall not be acted upon by the Convention until report thereon has been made by the committee. The President may at any time direct the committee to report forthwith.

29. The committee on Form and Phraseology shall examine and correct the proposals to amend the Constitution which are referred to it, for the purpose of avoiding repetitions, insuring accuracy in the text, and consistency; provided, that any change in the sense or legal effect or any material change in the construction shall be reported to the Convention as an amendment.

30. No committee, except the committee on Rules and Procedure, shall sit during the sessions of the Convention or of the Committee of the Whole, except by leave of the Convention.

#### COMMITTEE OF THE WHOLE.

31. When the Convention determines to go into Committee of the Whole, the President shall appoint the member who shall take the chair.

32. The rules of the Convention so far as applicable shall be observed in Committee of the Whole, except that one hundred members shall constitute a quorum; it cannot refer a matter to any other committee; it cannot adjourn; a motion for the previous question or for indefinite postponement shall not be in order; the yeas and nays shall not be called; and a member may speak more than once. The committee shall have the same powers as the Convention to enforce the attendance of members, and the Secretary and the Sergeant-at-Arms shall be the secretary and sergeant-at-arms, respectively, of the Committee of the Whole.

33. When the Committee of the Whole reports upon a resolution embodying a proposal to amend the Constitution, it shall be read and placed in the Orders of the Day for the next session, and shall then be open to amendment before the question is taken on ordering it to a second reading.<sup>1</sup>

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<sup>1</sup> Rule 33 was adopted August 21, 1917, as a substitute for rules 33 and 34 as they then existed.



## PROCEDURE.

35. All proposals to amend the Constitution shall embody a draft of the proposed amendment, and each proposal shall be filed by a member of the Convention with the Secretary before five o'clock P.M., June 25, 1917, and by him be submitted to the President, who shall read the proposals and, with the consent of the Convention, refer them to the appropriate committees, or to the Committee of the Whole.

36. No proposition shall be introduced or brought before the Convention unless it relates directly to its business. This rule shall not be suspended except by vote of four-fifths of the members present and voting.

37. If any member of the Convention shall so request, any order or resolution which shall be proposed for adoption shall be postponed until the next session without question.

38. The unfinished business in which the Convention was engaged at the time of the last adjournment shall have precedence in the Orders of the Day, after motions to reconsider.

39. No matter which has been duly placed in the Orders of the Day shall be discharged therefrom, or considered out of the regular course, except by vote of four-fifths of the members present and voting.

## PRECEDENCE OF MOTIONS.

40. When a question is under debate, no motion shall be entertained but to adjourn, to lay on the table, for the previous question, to close debate at a specified time, to postpone to a day certain, to commit or recommit, to amend, or to postpone indefinitely; which several motions shall have precedence in this order.

41. All questions shall be put in the order in which they are moved, unless the subsequent motion be previous in its nature; except that in naming sums and fixing times the largest sum and the longest time shall be put first.

42. No motion or proposition of a subject different from that under consideration shall be admitted under color of amendment.

43. Any member may call for the division of a question which is in its nature divisible. A motion to strike out and insert shall

be deemed indivisible; but a motion to strike out being lost, shall neither preclude amendment nor a motion to strike out and insert.

44. After a motion is stated by the President, it shall be in possession of the Convention, and shall be disposed of by its vote; but the mover may withdraw it, unless objection is made, at any time before a decision or amendment, except a motion to reconsider, which shall not be withdrawn after the time has elapsed within which it originally could be made.

45. A motion to adjourn shall always be in order; and that motion, or a request for the yeas and nays, shall be decided without debate. After July 16, 1917, until all amendments to the Constitution have been finally adopted for submission by the Convention to the people, no motion to adjourn for more than seven days at a time shall be entertained. On motions to lay on the table, to take from the table, to close debate at a specified time, to postpone to a day certain, to commit or recommit, and for suspension of any rule, and upon an appeal from the decision of the Chair, debate shall be limited to ten minutes, and no member shall speak more than three minutes. The statement of any question of personal privilege shall be limited to five minutes.

#### PREVIOUS QUESTION.

46. The previous question shall be put in the following form: "Shall the main question be now put?" Debate upon the main question shall be suspended until the previous question is decided. If the previous question is ordered, the member in charge of the measure shall have not exceeding ten minutes, and the vote shall be taken forthwith upon amendments reported by a committee, upon other pending amendments, and then upon the main question.

47. On the previous question debate shall be limited to ten minutes, and no member shall speak more than three minutes, nor more than once without leave; and all incidental questions of order, arising after a motion is made for the previous question, shall be decided without debate, except on appeal, duly seconded, and on such appeal no member shall be allowed to speak more than once without leave.

## RECONSIDERATION.

48. When a vote has passed, it shall be in order for any member to move a reconsideration thereof on the same or the succeeding day, and such motion, if made on the same day, shall be placed first in the Orders of the Day succeeding, and if made on the succeeding day it shall be made before the Orders of the Day are taken up. A motion to reconsider being rejected, shall not be renewed, nor shall any subject be a second time reconsidered: *provided*, that a motion to reconsider a vote upon a collateral matter, shall not remove the main subject under consideration from before the Convention, but shall be considered when made. Debate on motions to reconsider shall be limited to thirty minutes, and no member shall speak more than five minutes; but on a motion to reconsider a vote upon any collateral matter debate shall be limited to ten minutes, and no member shall speak more than three minutes.

## YEAS AND NAYS.

49. On all questions the sense of the Convention shall be taken by yeas and nays, provided forty members so require. No member shall be allowed to vote who enters the Convention after the vote is declared. The names of the members shall be called in alphabetical order.

## READINGS AND ENGROSSMENT.

50. Every proposal to amend the Constitution shall be read in Convention on three several days and be referred to and reported upon by the committee on Form and Phraseology before it is engrossed.

51. Proposals to amend the Constitution shall be read by their titles only, unless the full reading is requested.

52. Proposals to amend the Constitution shall be engrossed under the direction of the President.

53. After a proposal to amend the Constitution has been engrossed it shall not be amended. The question shall be on submitting the same to the people.

## ELECTIONS.

54. In all elections a time shall be designated therefor at least one day previous thereto, except in cases arising under Rule 8.

## COUNSEL AND AGENTS.

55. The provisions of Chapter 3 of the Revised Laws, and acts in amendment thereof, relating to legislative counsel and agents, shall apply to counsel and agents in all matters connected with the Convention. The Sergeant-at-Arms shall have charge of the enforcement of this rule, under the direction of the President.

## SUSPENSION, AMENDMENT AND REPEAL.

56. No rule or standing order of the Convention shall be dispensed with, altered or repealed, except by vote of two-thirds of the members present; but this rule, and rules 22, 28, 37, 42 and 48, shall not be dispensed with except by unanimous consent.

RECOMMENDATION OF GOVERNOR McCALL CONCERNING  
THE HOLDING OF A CONSTITUTIONAL CONVENTION,

BEING A PART OF HIS EXCELLENCY'S ADDRESS TO  
THE LEGISLATURE, JANUARY 6, 1916.

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*Gentlemen of the General Court.*

As a result of the vote of the people we have been made fellow laborers in the service of the Commonwealth, and long-established custom makes it my first official duty to speak to you upon those public questions which I think should especially engage our attention. I shall from time to time hereafter supplement what I say to-day as occasion may seem to require.

No Constitutional Convention has been held in Massachusetts since 1853. It is doubtful if another period of history of equal length can be found more characterized by social and industrial change than the sixty-two years which have elapsed since that time. After so long and so restless an interval, during which nothing but piecemeal revision has been considered, in the first instance by the Legislatures, I believe the time has come when our constitutional system should receive that connected and careful revision which it can best receive from a Convention chosen for the purpose. Believing that the time has come for holding a Convention, I recommend the submission of the question to the people, and the passage of all appropriate legislation necessary to that end and to carry out their will if they shall decide that a Convention shall be held. I recommend that you follow closely the precedents connected with the Convention of 1853. That Convention contained in its membership some of the greatest lawyers, publicists and statesmen our country has ever produced. The methods of constitutional amendment were precisely the same at that time

as they are now. That such a notable array of men should take part in a Constitutional Convention forms a weighty precedent for the legality of such a proceeding to-day. It tends strongly to refute the contention that because the people added a method of making amendments through preliminary action by the Legislature they thereby deprived themselves of the right, twice before exercised, as constituent members of the State, to consider the revision of the Constitution through a Convention if they should decide to do so. In order that the Convention may be composed of men best fitted for the work I recommend that its members be chosen without party designation, and that a liberal number of members be selected by the State at large, and others be selected at large by political divisions of the State, such as congressional or senatorial districts, and in addition that there should be one member from each representative district. This would give the people a wide latitude of choice and secure them the opportunity to select men especially qualified for the work who might otherwise be practically debarred by mere local conditions. I believe that with the wealth and variety of talent at her command the Commonwealth can summon into her service to-day as notable an assembly as served her in 1853.

The party of which a majority of us are members declared in its last platform in favor of amendments for biennial elections, an executive budget and the so-called short ballot. In addition to these proposed amendments others of an important character have been put forward and have the support of very many voters.

There has not been, so far as I know, any important demand in recent years for amending the Bill of Rights and the Articles relating to the Judiciary. For this reason there seems to be no necessity for submitting those parts of the Constitution, and I therefore recommend that the Bill of Rights and the Judiciary be withheld from submission if such a course may legally be taken. But if there can be no partial submission of the Articles to a Convention then I would recommend that the entire Constitution be submitted without reservation.

The method of amendment commonly employed has been through the action of the Legislature, followed by a popular

vote, and it was designed to be a conservative process. If a constitutional change should be approved by a majority of the Senate and by two-thirds of the House of Representatives in two successive Legislatures, and then adopted at an election, an effective barrier would be raised against changes in our organic law as a result of temporary popular opinion. Very often, however, members of the Legislature have treated the proceeding as purely political, and have been willing to vote for amendments, not because they believed they should be adopted but in order that the people might be permitted to pass upon them. Such an attitude would result in depriving the proceeding of the judgment of the members of the Legislature upon the wisdom of a proposed change. Amendment through the instrumentality of a Constitutional Convention is essentially conservative. The Legislature would first pass a law submitting to a popular vote the question whether a Convention should be held. After the people had voted in favor of a Convention they would elect delegates who would assemble and consider the changes which in their judgment should be made. Those changes would again be submitted to the people and not become effective until ratified by them. There would thus be four steps in the process: action by the Legislature, the vote of the people, action by the Convention, and finally, again a vote of the people. Such a deliberate procedure would be likely to enact into our organic law only such changes as would embody the settled opinion of the time.

ACT RELATIVE TO CALLING AND HOLDING A  
CONSTITUTIONAL CONVENTION.

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AN ACT TO ASCERTAIN AND CARRY OUT THE WILL OF  
THE PEOPLE RELATIVE TO THE CALLING AND HOLD-  
ING OF A CONSTITUTIONAL CONVENTION.

*Be it enacted by the Senate and House of Representatives in  
General Court assembled, and by the authority of the same,  
as follows:*

SECTION 1. For the purpose of ascertaining the will of the people of the Commonwealth with reference to the calling and holding of a Constitutional Convention, the Secretary of the Commonwealth shall cause to be placed on the official ballot to be used at the next annual State election the following question: — "Shall there be a Convention to revise, alter or amend the Constitution of the Commonwealth?" The votes upon said question shall be received, sorted, counted, declared and transmitted to the Secretary of the Commonwealth, laid before the Governor and Council, and by them opened and examined, in accordance with the laws relating to votes for State officers so far as they are applicable. The Governor shall, by public proclamation, on or before the first Wednesday in January next, make known the result by declaring the number of votes in the affirmative and the number in the negative; and if it shall appear that a majority of said votes is in the affirmative, it shall be deemed and taken to be the will of the people that a Convention be called and held to revise, alter or amend the Constitution, and in his proclamation the Governor shall call upon the people to elect delegates to the Convention, at a special election to be held in all the cities and towns of the Commonwealth on the first Tuesday in May in the year nineteen hundred and seventeen.



SECTION 2. The number of delegates to be elected to the Convention shall be three hundred and twenty, of whom sixteen shall be elected at large, sixty-four by the sixteen congressional districts, to wit, four by each district, and two hundred and forty by the legislative representative districts of the Commonwealth, each district having the same number of delegates as it is then entitled to elect Representatives to the General Court.

SECTION 3. Nomination of candidates for the office of delegate to the Constitutional Convention shall be made by nomination papers without party or political designation which shall be signed in the aggregate by not less than twelve hundred voters for each candidate at large, by not less than five hundred voters for each candidate for delegate from a congressional district, and by not less than one hundred voters for each candidate for delegate from a legislative representative district. Said papers shall be filed on or before five o'clock in the afternoon on the first Tuesday in March in the year nineteen hundred and seventeen. No person shall be a candidate for delegate in more than one district, or both in a district and at large. If nomination papers for more than one nomination for delegate are filed in behalf of a candidate, and if, within seventy-two hours after five o'clock in the afternoon of the first Tuesday in March aforesaid, he withdraws all but one nomination, the remaining nomination shall be valid. No person shall be a candidate for delegate from a legislative representative district in which he does not reside.

SECTION 4. If in the Commonwealth at large, or in any district, the number of persons nominated by nomination papers equals or exceeds three times the number to be elected delegates as provided by section two, a non-partisan primary shall be held in the Commonwealth, or in such district, on the first Tuesday of April in the year nineteen hundred and seventeen. At such primary, twice the number of persons to be elected delegates shall be chosen from those nominated by nomination papers, and those so chosen shall be deemed nominated as candidates for delegate, and their names only shall appear on the ballot at said special election. The provisions of section five of this act shall, so far as is consistent herewith, apply to the primaries provided for by this section.

SECTION 5. At the special election to be held under the provisions of section one, every person then entitled to vote for State officers shall have the right to vote for sixteen delegates at large, for four delegates from his congressional district, and for the number of delegates from his representative district to which that district is entitled under the provisions of section two. The number of delegates of each class for which the voter has the right to vote shall appear on the official ballot. No party or political designation shall appear on said ballot.

SECTION 6. The persons elected delegates shall meet in Convention in the State House, in Boston, on the first Wednesday in June in the year nineteen hundred and seventeen. They shall be the judges of the returns and election of their own members, and may adjourn from time to time; and one hundred and sixty-one of the persons elected shall constitute a quorum for the transaction of business. They shall be called to order by the Governor, and shall proceed to organize themselves in Convention, by choosing a president and such other officers and such committees as they may deem expedient, and by establishing rules of procedure; and when organized, they may take into consideration the propriety and expediency of revising the present Constitution of the Commonwealth, or making alterations or amendments thereof. Any such revision, alterations or amendments, when made and adopted by the said Convention, shall be submitted to the people for their ratification and adoption, in such manner as the Convention shall direct; and if ratified and adopted by the people in the manner directed by the Convention, the Constitution shall be deemed and taken to be revised, altered or amended accordingly; and if not so ratified and adopted the present Constitution shall be and remain the Constitution of the Commonwealth.

SECTION 7. The Convention shall be provided by the Sergeant-at-Arms, at the expense of the Commonwealth, with suitable quarters and facilities for exercising its functions. It shall establish the compensation of its officers and members, which shall not exceed seven hundred and fifty dollars for each member of the Convention as such. It shall, subject to the approval of the Governor and Council, provide for such other expenses of its session as it shall deem expedient, and may

cause to be prepared and issued a statement briefly setting forth such arguments as the Convention may see fit relative to any revision, alteration or amendment of the Constitution adopted by it, or any part thereof. The members of the Convention shall receive the mileage specified in section eight of chapter three of the Revised Laws, as amended by chapter six hundred and seventy-six of the acts of the year nineteen hundred and eleven. The Governor, with the advice and consent of the Council, is authorized to draw his warrant on the treasury for any of the foregoing expenses.

SECTION 8. The Secretary of the Commonwealth is hereby directed to transmit forthwith printed copies of this act to the selectmen of each town and the mayor of each city within the Commonwealth; and whenever the Governor shall issue his proclamation, calling upon the people to elect delegates, the Secretary shall also, immediately thereafter, transmit printed copies of said proclamation, attested by him, to the selectmen and mayors.

SECTION 9. All laws relating to nominations and nomination papers, and to primaries, elections and corrupt practices therein, shall, so far as is consistent herewith, apply to the nomination of candidates for delegate to the Convention, and to the primaries and special election provided for by this act. [*Approved April 3, 1916.*]

**The Commonwealth of Massachusetts.**

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BY HIS EXCELLENCY SAMUEL W. McCALL, GOVERNOR,  
A PROCLAMATION

CONCERNING THE CALLING AND HOLDING OF A  
CONSTITUTIONAL CONVENTION.

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*Whereas*, by an act of the General Court of this Commonwealth approved on the third day of April, nineteen hundred and sixteen, entitled "An Act to ascertain and carry out the will of the people relative to the calling and holding of a constitutional convention," being chapter ninety-eight of the General Acts of nineteen hundred and sixteen, it is provided that the Secretary of the Commonwealth shall cause to be placed on the official ballot to be used at the annual state election for the year nineteen hundred and sixteen the following question: "Shall there be a convention to revise, alter, or amend the constitution of the Commonwealth?" and

*Whereas*, provision is made in said act for the due return of the votes upon this question to the Secretary of the Commonwealth and for the opening and examining of said votes by the Governor and Council; and

*Whereas*, it is further provided that the Governor shall, by public proclamation, on or before the first Wednesday in January in the year nineteen hundred and seventeen, make known the result by declaring the number of votes in the affirmative and the number in the negative; and

*Whereas*, it is further provided that if it shall appear that a majority of said votes is in the affirmative that the Governor shall in his proclamation call upon the people to elect delegates to the convention at a special election to be held in all the

cities and towns of the Commonwealth on the first Tuesday in May in the year nineteen hundred and seventeen; and

*Whereas*, said question was placed upon said ballot by the Secretary of the Commonwealth; and

*Whereas*, the votes upon said question have been duly returned to the Secretary of the Commonwealth and opened and examined by the Governor and Council:

*Now, therefore*, I, Samuel W. McCall, Governor of the Commonwealth of Massachusetts, do hereby declare and make known that upon an examination in the manner provided by said act of all the votes upon this question it appears that the whole number of votes in the affirmative is 217,293, and that the whole number of votes in the negative is 120,979, making the whole number of votes upon this question to be 338,272; from which it appears that a majority of said votes is in the affirmative.

*And, therefore*, by virtue of the authority contained in said act, I do hereby call upon the people to elect delegates to the convention aforesaid at a special election to be held in all the cities and towns of the Commonwealth on the first Tuesday in May in the year nineteen hundred and seventeen, in accordance with the provisions of said act and in the manner therein provided.



*Given* at the Executive Chamber in Boston, this nineteenth day of December, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States of America the one hundred and forty-first.

SAMUEL W. McCALL.

By His Excellency the Governor.

ALBERT P. LANGTRY,  
*Secretary of the Commonwealth.*

**God Save the Commonwealth of Massachusetts.**

## ACT PROVIDING FOR THE APPOINTMENT OF A COMMISSION.

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AN ACT TO PROVIDE FOR THE APPOINTMENT OF A COMMISSION TO COMPILE INFORMATION AND DATA FOR THE USE OF THE CONSTITUTIONAL CONVENTION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. For the purpose of facilitating the work of the Convention to revise, alter or amend the Constitution of the Commonwealth, as provided by chapter ninety-eight of the General Acts of the year nineteen hundred and sixteen, a Commission of three learned and discreet persons shall be appointed by the Governor, one of whom shall be designated as chairman, who shall forthwith proceed to compile and render accessible, in convenient form and arrangement, such information, data and material as may aid the Convention in the discharge of its duties. The members of the Commission may receive such compensation and may incur such expense for clerical assistance, incidentals and printing as the Governor and Council may approve, not to exceed in all the sum of ten thousand dollars. The Governor is also empowered to fill any vacancy that may occur in said Commission. The provisions of the laws relating to civil service shall not apply to clerks appointed by the Commission.

SECTION 2. The Commission shall place at the disposal of the members of said Convention as soon as may be after their election the aforesaid information and data, from time to time, as the same is prepared and compiled and may, with the approval of the Governor, distribute to such members before or after the organization of the Convention as much thereof as the Governor may authorize to be printed. The Governor and Council, upon such terms and conditions as they may deem

expedient, may order that any material ordered printed for the use of said members shall be printed in sufficient quantity and distributed by the Secretary of the Commonwealth to the people at large.

SECTION 3. The Commission shall be provided with suitable accommodations in the State House and shall, together with the members of the Convention and the officers and employees thereof, have the same right of access to the State Library as the members of the General Court. There shall also be provided in the State House, subject to the approval of the Governor and Council, a room or rooms, conveniently near the place of meeting of the Convention where the aforesaid information and data may be suitably arranged, indexed and catalogued.

SECTION 4. The service of said Commission shall terminate upon the final adjournment of the Convention, or whenever at any time prior to such adjournment, the Governor may determine that the purposes and objects of said Commission have been accomplished.

SECTION 5. This act shall take effect upon its passage.  
[Approved February 28, 1917.]

NOTE. — On February 28, 1917, His Excellency the Governor appointed to the Commission William B. Munro of Boston, Chairman, Lawrence B. Evans of Medford and Roger Sherman Hoar of Concord. The Commissioners took the oath of office and entered upon their duties March 1, when they completed their organization by naming Commissioner Evans to be Vice-Chairman and by the appointment of Henry Ward Bird to be Secretary.

ACT RELATIVE TO MEMBERSHIP IN THE  
CONSTITUTIONAL CONVENTION.

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AN ACT RELATIVE TO MEMBERSHIP IN THE CONSTITUTIONAL CONVENTION OF THE YEAR NINETEEN HUNDRED AND SEVENTEEN.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. The provision of section eleven of chapter eighteen of the Revised Laws which prohibits any person from receiving at the same time more than one salary from the Commonwealth shall not apply to persons elected as members of the Constitutional Convention of the year nineteen hundred and seventeen.

SECTION 2. This act shall take effect upon its passage.  
[Approved March 12, 1917.



## DELEGATES TO THE CONSTITUTIONAL CONVENTION ARRANGED BY DISTRICTS.

### DELEGATES AT LARGE.

CHARLES FRANCIS ADAMS,	Concord.
GEORGE W. ANDERSON,	Brookline.
JOHN L. BATES,	Brookline.
CHARLES F. CHOATE, Jr.,	Southborough.
GEORGE W. COLEMAN,	Boston.
LOUIS A. COOLIDGE,	Milton.
JOHN W. CUMMINGS,	Fall River.
EDWIN U. CURTIS,	Boston.
DANIEL R. DONOVAN,	Springfield.
MATTHEW HALE,	Boston.
JAMES T. MORIARTY,	Boston.
JOSEPH C. PELLETIER,	Boston.
JOSIAH QUINCY,	Boston.
JOSEPH WALKER,	Brookline.
DAVID I. WALSH,	Fitchburg.
SHERMAN L. WHIPPLE,	Brookline.

### DELEGATES FROM CONGRESSIONAL DISTRICTS.

#### *First District.*

NATHAN P. AVERY,	Holyoke.
CHARLES E. HIBBARD,	Pittsfield.
DANA MALONE, <sup>1</sup>	Greenfield.
HARRY B. PUTNAM,	Westfield.

#### *Second District.*

SCOTT ADAMS,	Springfield.
HENRY H. BOSWORTH,	Springfield.
GEORGE B. CHURCHILL,	Amherst.
WILLIAM H. FEIKER,	Northampton.

#### *Third District.*

HERBERT E. CUMMINGS,	North Brookfield.
TELESPHORE LEBOEUF,	Webster.
ARTHUR H. LOWE,	Fitchburg.
HERBERT PARKER,	Lancaster.

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<sup>1</sup> Died August 13, 1917.

*Fourth District.*

ZELOTES W. COOMBS,	. . . . .	Worcester.
JAMES LOGAN,	. . . . .	Worcester.
CHARLES T. TATMAN,	. . . . .	Worcester.
CHARLES G. WASHBURN,	. . . . .	Worcester.

*Fifth District.*

CHESTER W. CLARK,	. . . . .	Wilmington.
JOHN W. DALY,	. . . . .	Lowell.
EDWARD FISHER,	. . . . .	Westford.
HAMLET S. GREENWOOD,	. . . . .	Lowell.

*Sixth District.*

CHARLES O. BAILEY,	. . . . .	Newbury.
SAMUEL W. GEORGE,	. . . . .	Haverhill.
WILLFRED W. LUFKIN,	. . . . .	Essex.
EDMUND G. SULLIVAN,	. . . . .	Salem.

*Seventh District.*

RALPH S. BAUER,	. . . . .	Lynn.
WALTER H. CREAMER,	. . . . .	Lynn.
JAMES A. DONOVAN,	. . . . .	Lawrence.
MICHAEL A. SULLIVAN,	. . . . .	Lawrence.

*Eighth District.*

EVERETT C. BENTON,	. . . . .	Belmont.
JOHN Q. A. BRACKETT,	. . . . .	Arlington.
ALBERT BUSHNELL HART,	. . . . .	Cambridge.
HARRY N. STEARNS,	. . . . .	Cambridge.

*Ninth District.*

CHARLES BRUCE,	. . . . .	Everett.
ARTHUR B. CURTIS,	. . . . .	Revere.
ELBRIDGE G. DAVIS,	. . . . .	Malden.
CHARLES L. UNDERHILL,	. . . . .	Somerville.

*Tenth District.*

JAMES H. BRENNAN,	. . . . .	Boston.
THOMAS F. DONOVAN,	. . . . .	Boston.
JAMES E. MAGUIRE,	. . . . .	Boston.
JOSEPH J. MURLEY,	. . . . .	Boston.

*Eleventh District.*

FRANCIS R. BANGS, . . . . .	Boston.
FRANCIS J. HORGAN, . . . . .	Boston.
JOHN A. KELIHER, . . . . .	Boston.
DANIEL W. LANE, . . . . .	Boston.

*Twelfth District.*

PATRICK BOWEN, . . . . .	Boston.
JAMES F. CREED, . . . . .	Boston.
DANIEL J. GALLAGHER, . . . . .	Boston.
JOSEPH F. O'CONNELL, . . . . .	Boston.

*Thirteenth District.*

FREDERICK L. ANDERSON, . . . . .	Newton.
CHARLES S. BIRD, Jr., . . . . .	Walpole.
ROBERT LUCE, . . . . .	Waltham.
SAMUEL L. POWERS, . . . . .	Newton.

*Fourteenth District.*

GEORGE L. BARNES, . . . . .	Weymouth.
EZRA W. CLARK, . . . . .	Brockton.
ASA P. FRENCH, . . . . .	Randolph.
LOUIS F. R. LANGELIER, . . . . .	Quincy.

*Fifteenth District.*

FREDERICK S. HALL, . . . . .	Taunton.
JAMES M. MORTON, . . . . .	Fall River.
JOSEPH L. SWEET, . . . . .	Attleboro.
JOSEPH TURNER, . . . . .	Fall River.

*Sixteenth District.*

ELMER L. CURTISS, . . . . .	Hingham.
ARTHUR N. HARRIMAN, . . . . .	New Bedford.
CHARLES MITCHELL, . . . . .	New Bedford.
SAMUEL ROSS, . . . . .	New Bedford.

## DELEGATES FROM REPRESENTATIVE DISTRICTS.

*First Barnstable District.*

JOHN D. W. BODFISH, . . . . .	Barnstable.
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*Second Barnstable District.*

GEORGE LEROY WEEKES, . . . . .	Harwich.
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*Third Barnstable District.*

JEROME S. SMITH, . . . . . Provincetown.

*First Berkshire District.*

ISAAC FREEMAN HALL, . . . . . North Adams.

*Second Berkshire District.*

GEORGE B. WATERMAN, . . . . . Williamstown.

*Third Berkshire District.*

CHARLES STOEBER, . . . . . Adams.

*Fourth Berkshire District.*

WILLIAM A. BURNS, . . . . . Pittsfield.

CLEMENT F. COOGAN, . . . . . Pittsfield.

IRVING D. FERREY, . . . . . Pittsfield.

*Fifth Berkshire District.*

JOHN M. SHEA, . . . . . Dalton.

*Sixth Berkshire District.*

CHARLES GIDDINGS, . . . . . Great Barrington.

*First Bristol District.*

EDWARD A. SWEENEY, . . . . . Attleboro.

JOHN L. THOMPSON, . . . . . North Attleborough.

*Second Bristol District.*

CLARENCE A. BARNES, . . . . . Mansfield.

*Third Bristol District.*

LOUIS SWIG, . . . . . Taunton.

*Fourth Bristol District.*

EDMUND BASSETT, . . . . . Taunton.

*Fifth Bristol District.*

DWIGHT F. LANE, . . . . . Dighton.

*Sixth Bristol District.*

HERBERT WING, . . . . . Dartmouth.

*Seventh Bristol District.*

JOSEPH ZOËL BOUCHER, . . . . . New Bedford.  
 GEORGE WALKER, . . . . . New Bedford.

*Eighth Bristol District.*

WILLIAM J. BULLOCK, . . . . . New Bedford,  
 JAMES P. DORAN, . . . . . New Bedford.  
 RALPH L. THELLER, . . . . . New Bedford.

*Ninth Bristol District.*

GEORGE H. HICKS, . . . . . Fall River.  
 JAMES WHITEHEAD, . . . . . Fall River.

*Tenth Bristol District.*

PATRICK H. HARRINGTON, . . . . . Fall River.  
 WILLIAM MORAN, . . . . . Fall River.

*Eleventh Bristol District.*

WARREN S. BARKER, . . . . . Fall River.  
 WILLIAM CYRIL CROSSLEY, . . . . . Fall River.  
 ROBERT A. DEAN, . . . . . Fall River.

*First Dukes District.*

WILLIAM J. LOOK, . . . . . Tisbury.

*First Essex District.*

SAMUEL I. COLLINS, . . . . . Amesbury.

*Second Essex District.*

EDWARD R. HALE, . . . . . Haverhill.

*Third Essex District.*

HUBERT C. THOMPSON, . . . . . Haverhill.

*Fourth Essex District.*

CHARLES H. MORRILL, . . . . . Haverhill.  
 GEORGE P. WEBSTER, . . . . . Haverhill.

*Fifth Essex District.*

ARCHIE N. FROST, . . . . . Lawrence.  
 ALBION G. PEIRCE, . . . . . Methuen.

*Sixth Essex District.*

JOHN C. TWOMEY, . . . . . Lawrence.

*Seventh Essex District.*

JAMES H. DERBYSHIRE, . . . . . Lawrence.

*Eighth Essex District.*

JAMES P. DONNELLY, . . . . . Lawrence.

*Ninth Essex District.*

NESBIT G. GLEASON, . . . . . Andover.

*Tenth Essex District.*

ARTHUR HOLBROOK WELLMAN, . . . . . Topsfield.

*Eleventh Essex District.*

CHARLES P. COONEY, . . . . . Peabody.

*Twelfth Essex District.*

MIAL W. CHASE, . . . . . Lynn.

AUGUSTUS J. HOITT, . . . . . Lynn.

*Thirteenth Essex District.*

FRANK P. BENNETT, . . . . . Saugus.

ELMER E. BOYER, . . . . . Lynn.

RUTHERFORD E. SMITH, . . . . . Lynnfield.

*Fourteenth Essex District.*

ROY F. BERGENGREN, . . . . . Lynn.

EUGENE B. FRASER, . . . . . Lynn.

HENRY T. LUMMUS, . . . . . Lynn.

*Fifteenth Essex District.*

CHARLES D. C. MOORE, . . . . . Swampscott.

*Sixteenth Essex District.*

WILLIAM D. T. TREFRY, . . . . . Marblehead.

*Seventeenth Essex District.*

ALBERT W. BATCHELDER, . . . . . Salem.

*Eighteenth Essex District.*

JOHN P. O'CONNELL, . . . . . Salem.

*Nineteenth Essex District.*

EDWARD THOMPSON, . . . . . Beverly.

*Twentieth Essex District.*

AUGUSTUS P. LORING, . . . . . Beverly.

*Twenty-first Essex District.*

GEORGE FRYE MERRILL, . . . . . Gloucester.

*Twenty-second Essex District.*

CARLTON W. WONSON, . . . . . Gloucester.

*Twenty-third Essex District.*

HORACE I. BARTLETT, . . . . . Newburyport.

*Twenty-fourth Essex District.*

HAROLD A. BESSE, . . . . . Newburyport.

*First Franklin District.*

LYMAN A. CRAFTS, . . . . . Whately.

*Second Franklin District.*

ABNER S. McLAUD, . . . . . Greenfield.

*Third Franklin District.*

FRANK L. BOYDEN, . . . . . Deerfield.

*Fourth Franklin District.*

ELISHA S. HALL, . . . . . Orange.

*First Hampden District.*

THOMAS W. KENEFICK, . . . . . Palmer.

*Second Hampden District.*

FRED R. LINKE, . . . . . West Springfield.

NELSON SHERBURNE, . . . . . West Springfield.

*Third Hampden District.*

WILLIAM J. GRANFIELD, . . . . . Springfield.

JOHN MITCHELL, . . . . . Springfield.

*Fourth Hampden District.*

THEODORE W. ELLIS, . . . . . Springfield.

GEORGE H. FOSS, . . . . . Springfield.

*Fifth Hampden District.*

RUFUS H. TILTON, . . . . . Springfield.

*Sixth Hampden District.*

JOHN L. KILBON, . . . . . Springfield.

*Seventh Hampden District.*

SAMUEL F. BROWN, . . . . . Springfield.

*Eighth Hampden District.*

JOHN D. O'CONNOR, . . . . . Chicopee.

*Ninth Hampden District.*

JOHN S. BEGLEY, . . . . . Holyoke.

*Tenth Hampden District.*

LOUIS F. DELANEY, . . . . . Holyoke.

*Eleventh Hampden District.*

DANIEL A. MARTIN, . . . . . Holyoke.

*Twelfth Hampden District.*

ARTHUR S. KNEIL, . . . . . Westfield.

*First Hampshire District.*

RUFUS H. COOK, . . . . . Northampton.

*Second Hampshire District.*

FRANK E. LYMAN, . . . . . Easthampton.

*Third Hampshire District.*

HENRY E. GAYLORD, . . . . . South Hadley.

*Fourth Hampshire District.*

ROLAND D. SAWYER, . . . . . Ware.

*First Middlesex District.*

JAMES T. BARRETT, . . . . . Cambridge.

*Second Middlesex District.*

JAMES F. AYLWARD, . . . . . Cambridge.

WILLIAM R. DAVIS, . . . . . Cambridge.

CHARLES J. WOOD, . . . . . Cambridge.



*Third Middlesex District.*

JOHN P. GOOD, . . . . .	Cambridge.
JOHN T. SHEA, . . . . .	Cambridge.
ROBERT WALCOTT, . . . . .	Cambridge.

*Fourth Middlesex District.*

JAMES A. LOWELL, . . . . .	Newton.
JAMES P. RICHARDSON, . . . . .	Newton.
GUY M. WINSLOW, . . . . .	Newton.

*Fifth Middlesex District.*

PATRICK S. BRODERICK, . . . . .	Waltham.
FRANCIS E. WEBSTER, . . . . .	Waltham.

*Sixth Middlesex District.*

ROBERT S. CORRIGAN, . . . . .	Natick.
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*Seventh Middlesex District.*

JOHN M. MERRIAM, . . . . .	Framingham.
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*Eighth Middlesex District.*

EDWARD CARR, . . . . .	Hopkinton.
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*Ninth Middlesex District.*

CHARLES F. MCCARTHY, . . . . .	Marlborough.
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*Tenth Middlesex District.*

FREDERICK P. GLAZIER, . . . . .	Hudson.
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*Eleventh Middlesex District.*

EDWARD J. ROBBINS, . . . . .	Chelmsford.
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*Twelfth Middlesex District.*

EDWARD A. RICHARDSON, . . . . .	Ayer.
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*Thirteenth Middlesex District.*

WILLIAM WHEELER, . . . . .	Concord.
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*Fourteenth Middlesex District.*

PETER DALEY, . . . . .	Lowell.
PATRICK F. NESTOR, . . . . .	Lowell.

*Fifteenth Middlesex District.*

SMITH J. ADAMS,	Lowell.
HENRY V. CHARBONNEAU,	Lowell.
WILLIAM H. WILSON,	Lowell.

*Sixteenth Middlesex District.*

JOHN J. O'CONNELL,	Lowell.
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*Seventeenth Middlesex District.*

MAURICE A. BUCK,	Billerica.
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*Eighteenth Middlesex District.*

CHARLES P. HOWARD,	Reading.
ARTHUR N. NEWHALL,	Stoneham.

*Nineteenth Middlesex District.*

RAYMOND P. DELLINGER,	Wakefield.
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*Twentieth Middlesex District.*

THOMAS J. BOYNTON,	Everett.
H. HUESTIS NEWTON,	Everett.

*Twenty-first Middlesex District.*

MAURICE R. FLYNN,	Malden.
TRUMAN R. HAWLEY,	Malden.
ALEXANDER KERR,	Malden.

*Twenty-second Middlesex District.*

GEORGE R. JONES,	Melrose.
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*Twenty-third Middlesex District.*

HENRY C. BRINE,	Somerville.
LEONARD B. CHANDLER,	Somerville.
FRANCIS P. GARLAND,	Somerville.

*Twenty-fourth Middlesex District.*

J. WARREN BAILEY,	Somerville.
J. FRANKLIN KNOTTS,	Somerville.
WILLIAM J. SHANAHAN,	Somerville.

*Twenty-fifth Middlesex District.*

CHARLES FREDERICK DUTCH,	Winchester.
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*Twenty-sixth Middlesex District.*

FRED J. BURRELL, . . . . . Medford.  
 BENJAMIN F. HAINES, . . . . . Medford.

*Twenty-seventh Middlesex District.*

J. HOWELL CROSBY, . . . . . Arlington.

*Twenty-eighth Middlesex District.*

ROBERT P. CLAPP, . . . . . Lexington.

*Twenty-ninth Middlesex District.*

GEORGE H. DALE, . . . . . Watertown.

*First Nantucket District.*

REGINALD T. FITZ-RANDOLPH, . . . . . Nantucket.

*First Norfolk District.*

HENRY M. HUTCHINGS, . . . . . Dedham.

*Second Norfolk District.*

JAMES M. CODMAN, Jr., . . . . . Brookline.  
 FRED HOMER WILLIAMS, . . . . . Brookline.

*Third Norfolk District.*

BROOKS ADAMS, . . . . . Quincy.  
 PAUL R. BLACKMUR, . . . . . Quincy.  
 JOHN W. MCANARNEY, . . . . . Quincy.

*Fourth Norfolk District.*

LINCOLN BRYANT, . . . . . Milton.

*Fifth Norfolk District.*

WALLACE H. BICKNELL, . . . . . Weymouth.

*Sixth Norfolk District.*

LOUIS EDWIN FLYE, . . . . . Holbrook.

*Seventh Norfolk District.*

TIMOTHY F. QUINN, . . . . . Sharon.

*Eighth Norfolk District.*

GEORGE FRANKLIN WILLETT, . . . . . Norwood.

*Ninth Norfolk District.*

ALBERT E. PILLSBURY, . . . . . Wellesley.

*Tenth Norfolk District.*

ORESTES T. DOE, . . . . . Franklin.

*First Plymouth District.*

HARRY R. TALBOT, . . . . . Plymouth.

*Second Plymouth District.*

ERNEST H. SPARRELL, . . . . . Norwell.

*Third Plymouth District.*

WALTER L. BOUVÉ, . . . . . Hingham.

*Fourth Plymouth District.*

GEORGE W. KELLEY, . . . . . Rockland.

*Fifth Plymouth District.*

CLARENCE W. HARDING, . . . . . Whitman.

*Sixth Plymouth District.*

ROBERT T. DELANO, . . . . . Wareham.

*Seventh Plymouth District.*

ALBERT H. WASHBURN, . . . . . Middleborough.

*Eighth Plymouth District.*

EDWARD A. MACMASTER, . . . . . Bridgewater.

*Ninth Plymouth District.*

PATRICK PETERSON, . . . . . Brockton.

*Tenth Plymouth District.*

E. GERRY BROWN, . . . . . Brockton.

WALTER F. RUSSELL,<sup>1</sup> . . . . . Brockton.*Eleventh Plymouth District.*

A. WEBSTER BUTLER, . . . . . Brockton.

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<sup>1</sup> Died June 22, 1917.

*First Suffolk District.*

THOMAS R. KELLEY, . . . . . Boston.  
 CHRISTOPHER A. SHEEHAN, . . . . . Boston.

*Second Suffolk District.*

JOHN J. DOUGLASS, . . . . . Boston.  
 WILLIAM J. SULLIVAN, . . . . . Boston.

*Third Suffolk District.*

JAMES J. BRENNAN, . . . . . Boston.  
 THOMAS H. GREEN, . . . . . Boston.

*Fourth Suffolk District.*

JOHN J. MAHONEY, . . . . . Boston.  
 JOSEPH M. SULLIVAN, . . . . . Boston.

*Fifth Suffolk District.*

MARTIN M. LOMASNEY, . . . . . Boston.  
 DAVID MANCOVITZ, . . . . . Boston.  
 ALFRED P. SCIGLIANO, . . . . . Boston.

*Sixth Suffolk District.*

TIMOTHY F. CALLAHAN, . . . . . Boston.  
 JOHN A. DONOGHUE, . . . . . Boston.  
 JOHN J. GARTLAND, . . . . . Boston.

*Seventh Suffolk District.*

GUY W. COX, . . . . . Boston.  
 WILLIAM S. KINNEY, . . . . . Boston.  
 DAVID T. MONTAGUE, . . . . . Boston.

*Eighth Suffolk District.*

CHARLES P. CURTIS, Jr., . . . . . Boston.  
 HENRY PARKMAN, . . . . . Boston.

*Ninth Suffolk District.*

WILLIAM FLAHERTY, . . . . . Boston.  
 MARTIN L. MARTIN, . . . . . Boston.

*Tenth Suffolk District.*

ROBERT E. BIGNEY, . . . . . Boston.  
 DANIEL V. McISAAC, . . . . . Boston.

*Eleventh Suffolk District.*

JOHN W. McCORMACK, . . . . . Boston.  
 MICHAEL J. REIDY, . . . . . Boston.

*Twelfth Suffolk District.*

HERBERT A. KENNY, . . . . . Boston.  
 JOHN J. MANSFIELD, . . . . . Boston.

*Thirteenth Suffolk District.*

JOHN H. CRAVEN, . . . . . Boston.  
 TIMOTHY J. DRISCOLL, . . . . . Boston.

*Fourteenth Suffolk District.*

FRANCIS M. COSTELLO, . . . . . Boston.  
 WILLIAM H. SULLIVAN, . . . . . Boston.

*Fifteenth Suffolk District.*

LUKE L. KELLY, . . . . . Boston.  
 GEORGE H. McCAFFREY, Jr., . . . . . Boston.

*Sixteenth Suffolk District.*

JOHN BALLANTYNE, . . . . . Boston.  
 DAVID STONEMAN, . . . . . Boston.

*Seventeenth Suffolk District.*

WILLIAM J. COUGHLAN, . . . . . Boston.  
 DENNIS D. DRISCOLL, . . . . . Boston.

*Eighteenth Suffolk District.*

JAMES J. MOYNIHAN, . . . . . Boston.  
 JOHN F. MYRON, . . . . . Boston.

*Nineteenth Suffolk District.*

SANFORD BATES, . . . . . Boston.  
 JOHN F. CUSICK, . . . . . Boston.  
 JOSEPH MICHELMAN, . . . . . Boston.

*Twentieth Suffolk District.*

E. PHILIP FINN, . . . . . Chelsea.

*Twenty-first Suffolk District.*

EUGENE P. WHITTIER, . . . . . Winthrop.

*Twenty-second Suffolk District.*

FRANCIS N. BALCH, . . . . . Boston.  
 JOHN GRAUMANN, . . . . . Boston.  
 JOSEPH J. LEONARD, . . . . . Boston.

*Twenty-third Suffolk District.*

JOHN L. MURPHY, . . . . . Chelsea.

*Twenty-fourth Suffolk District.*

PERCY G. BOLSTER, . . . . . Boston.  
 GEORGE S. PARKER, . . . . . Boston.  
 AUGUSTUS W. PERRY, . . . . . Boston.

*Twenty-fifth Suffolk District.*

WILLIAM S. YOUNGMAN, . . . . . Boston.

*Twenty-sixth Suffolk District.*

DANIEL H. COAKLEY, . . . . . Boston.

*Twenty-seventh Suffolk District.*

MICHAEL F. SHAW, . . . . . Revere.

*First Worcester District.*

ANDREW FOSTER HAMILTON, . . . . . Athol.

*Second Worcester District.*

DAVID R. COLLIER, . . . . . Gardner.  
 CHARLES M. DAY, . . . . . Winchendon.

*Third Worcester District.*

JOHN A. WHITE, . . . . . North Brookfield.

*Fourth Worcester District.*

GEORGE H. ROBINSON, . . . . . Sturbridge.

*Fifth Worcester District.*

LOUIS O. RIEUTORD, . . . . . Southbridge.

*Sixth Worcester District.*

JOSEPH A. LOVE, . . . . . Webster.

*Seventh Worcester District.*

HERBERT L. RAY, . . . . . Sutton.

*Eighth Worcester District.*

JAMES R. FERRY, . . . . . Northbridge.

*Ninth Worcester District.*

JOSEPH S. GATES, . . . . . Westborough.

JOHN C. LYNCH, . . . . . Milford.

*Tenth Worcester District.*

ALLAN G. BUTTRICK, . . . . . Lancaster.

AMOS T. SAUNDERS, . . . . . Clinton.

*Eleventh Worcester District.*

FRANK S. FARNSWORTH, . . . . . Leominster.

EDWARD H. NUTTING, . . . . . Leominster.

*Twelfth Worcester District.*

BENJAMIN A. COOK, . . . . . Fitchburg.

HENRY H. WHEELOCK, . . . . . Fitchburg.

*Thirteenth Worcester District.*

CLARENCE W. HOBBS, Jr., . . . . . Worcester.

*Fourteenth Worcester District.*

JOSIAH B. SHATTUCK, . . . . . Worcester.

*Fifteenth Worcester District.*

DANIEL J. MARSHALL, . . . . . Worcester.

*Sixteenth Worcester District.*

MARK N. SKERRETT, . . . . . Worcester.

*Seventeenth Worcester District.*

FRANCIS P. McKEON, . . . . . Worcester.

*Eighteenth Worcester District.*

CHARLES G. LARSON, . . . . . Worcester.

*Nineteenth Worcester District.*

S. HAMILTON COE, . . . . . Worcester.



*Twentieth Worcester District.*

CHARLES R. JOHNSON, . . . . . Worcester.

*Twenty-first Worcester District.*

GEORGE F. BROOKS, . . . . . Worcester.

*Twenty-second Worcester District.*

FRANK F. DRESSER, . . . . . Worcester.

**DELEGATES TO THE CONSTITUTIONAL CONVENTION  
ARRANGED ALPHABETICALLY WITH THEIR  
COMMITTEE ASSIGNMENTS.**

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ADAMS, BROOKS, . . . . .	135 Adams Street, Quincy.
Executive.	
ADAMS, CHARLES FRANCIS, . . . . .	Fairhaven Hill, Concord.
Taxation.	
ADAMS, SCOTT, . . . . .	54 Randolph Street, Springfield.
Judicial Procedure.	
ADAMS, SMITH J., . . . . .	11 Gilbride Terrace, Lowell.
Military Affairs.	
ANDERSON, FREDERICK L., . . . . .	169 Homer Street, Newton.
Bill of Rights.	
ANDERSON, GEORGE W., . . . . .	219 Fisher Avenue, Brookline.
Public Affairs ( <i>chairman</i> ).	
AVERY, NATHAN P., . . . . .	1150 Northampton Street, Holyoke.
Social Insurance.	
AYLWARD, JAMES F., . . . . .	259 Harvard Street, Cambridge.
Suffrage.	
BAILEY, CHARLES O., . . . . .	Church Street, Newbury.
Initiative and Referendum.	
BAILEY, J. WARREN, . . . . .	15 Dover Street, Somerville.
State Administration.	
BALCH, FRANCIS N., . . . . .	52 Eliot Street, Jamaica Plain.
State Administration.	
BALLANTYNE, JOHN, . . . . .	63 Copeland Street, Roxbury.
County and District Government.	
BANGS, FRANCIS R., . . . . .	190 Marlborough Street, Boston.
Municipal Government.	
BARKER, WARREN S., . . . . .	32 Underwood Street, Fall River.
Liquor Traffic.	
BARNES, CLARENCE A., . . . . .	79 Rumford Avenue, Mansfield.
Suffrage.	
BARNES, GEORGE L., . . . . .	544 Main Street, Weymouth.
Bill of Rights ( <i>clerk</i> ).	
BARRETT, JAMES T., . . . . .	97 Otis Street, Cambridge.
Municipal Government.	
BARTLETT, HORACE I., . . . . .	70 Moseley Avenue, Newburyport.
Form and Phraseology.	

- BASSETT, EDMUND, . . . . . 37 Church Green, Taunton.  
Judicial Procedure.
- BATCHELDER, ALBERT W., . . . . 321 Lafayette Street, Salem.  
Military Affairs.
- BATES, JOHN L., . . . . . 1537 Beacon Street, Brookline.  
*President of the Convention.*
- BATES, SANFORD, . . . . . 107 Beaumont Street, Dorchester.  
Liquor Traffic.
- BAUER, RALPH S., . . . . . 169 Lynn Shore Drive, Lynn.  
Municipal Government.
- BEGLEY, JOHN S., . . . . . 214 Lyman Street, Holyoke.  
Military Affairs.
- BENNETT, FRANK P., . . . . . Oaklandvale Farm, Saugus.  
Suffrage.
- BENTON, EVERETT C., . . . . . 75 Oakley Road, Belmont.  
Executive.
- BERGENGREN, ROY F., . . . . . 143 Timson Street, Lynn.  
Liquor Traffic.
- BESSE, HAROLD A., . . . . . 10 Garden Street, Newburyport.  
Municipal Government.
- BICKNELL, WALLACE H., . . . . . 258 Front Street, Weymouth.  
Liquor Traffic.
- BIGNEY, ROBERT E., . . . . . 531 East Fourth Street, South Boston.  
Social Insurance (*clerk*).
- BIRD, CHARLES S., Jr., . . . . . Bird Avenue, Walpole.  
Contingent Expenses and Pay-Roll.
- BLACKMUR, PAUL R., . . . . . 74 Elm Street, Quincy.  
Form and Phraseology.
- BODFISH, JOHN D. W., . . . . . Main Street, Barnstable.  
Social Insurance.
- BOLSTER, PERCY G., . . . . . 217 Norfolk Street, Dorchester.  
Amendment and Codification of the Constitution.
- BOSWORTH, HENRY H., . . . . . 54 Bowdoin Street, Springfield.  
State Administration.
- BOUCHER, JOSEPH ZOËL, . . . . . 253 Collette Street, New Bedford.  
Social Insurance.
- BOUVÉ, WALTER L., . . . . . Cottage Street, Hingham.  
Military Affairs (*chairman*).
- BOWEN, PATRICK, . . . . . 10 Dix Street, South Boston.  
County and District Government.
- BOYDEN, FRANK L., . . . . . Albany Road, Deerfield.  
Education.
- BOYER, ELMER E., . . . . . 165 Lynnfield Street, Lynn.  
Executive.
- BOYNTON, THOMAS J., . . . . . 60 Summer Street, Everett.  
Rules and Procedure, Labor (*chairman*).

BRACKETT, JOHN Q. A.,	87 Pleasant Street, Arlington.
Social Welfare ( <i>chairman</i> ).	
BRENNAN, JAMES H.,	42 Chapman Street, Charlestown.
Liquor Traffic ( <i>clerk</i> ).	
BRENNAN, JAMES J.,	68 Elm Street, Charlestown.
Public Affairs.	
BRINE, HENRY C.,	21 Greene Street, Somerville.
Municipal Government.	
BRODERICK, PATRICK S.,	Trapelo Road, Waltham.
Military Affairs.	
BROOKS, GEORGE F.,	604 Pleasant Street, Worcester.
Public Affairs.	
BROWN, E. GERRY,	22 Brett Street, Brockton.
Labor.	
BROWN, SAMUEL F.,	78 Worcester Street, Springfield.
Labor.	
BRUCE, CHARLES,	8 Forest Avenue, Everett.
Municipal Government.	
BRYANT, LINCOLN,	149 Randolph Avenue, Milton.
Military Affairs, Municipal Government.	
BUCK, MAURICE A.,	Boston Road, Billerica.
Social Welfare.	
BULLOCK, WILLIAM J.,	347 Pleasant Street, New Bedford.
Social Welfare.	
BURNS, WILLIAM A.,	97 Appleton Avenue, Pittsfield.
Judiciary.	
BURRELL, FRED J.,	235 Salem Street, Medford.
Executive.	
BUTLER, A. WEBSTER,	618 Cary Street, Brockton.
Public Affairs.	
BUTTRICK, ALLAN G.,	Main Street, Lancaster.
Suffrage.	
CALLAHAN, TIMOTHY F.,	28 Milford Street, Boston.
Bill of Rights.	
CARR, EDWARD,	Cedar Street, Hopkinton.
Social Insurance.	
CHANDLER, LEONARD B.,	45 Jaques Street, Somerville.
Bill of Rights.	
CHARBONNEAU, HENRY V.,	980 Moody Street, Lowell.
Labor.	
CHASE, MIAL W.,	15 Euclid Avenue, Lynn.
Education.	
CHOATE, CHARLES F., Jr.,	Main Street, Southborough.
Initiative and Referendum.	
CHURCHILL, GEORGE B.,	25 Spring Street, Amherst.
Initiative and Referendum.	

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| CLAPP, ROBERT P.,  | 27 Merriam Street, Lexington.      |
| Public Affairs.  |                                    |
| CLARK, CHESTER W., cor. Middlesex Ave. and Clark Street, Wilmington. |                                    |
| Judicial Procedure.  |                                    |
| CLARK, EZRA W.,  | 3 Garden Road, Brockton.           |
| Liquor Traffic.  |                                    |
| COAKLEY, DANIEL H.,  | 52 Parsons Street, Brighton.       |
| Judicial Procedure.  |                                    |
| CODMAN, JAMES M., Jr.,   | 164 Warren Street, Brookline.      |
| State Finance.   |                                    |
| COE, S. HAMILTON,  | 26 Richards Street, Worcester.     |
| Municipal Government.  |                                    |
| COLEMAN, GEORGE W.,  | 177 West Brookline Street, Boston. |
| Initiative and Referendum.   |                                    |
| COLLIER, DAVID R.,   | 21 Green Street, Gardner.          |
| Labor.   |                                    |
| COLLINS, SAMUEL I.,  | 156 Elm Street, Amesbury.          |
| State Finance.   |                                    |
| COOGAN, CLEMENT F.,  | 135 East Street, Pittsfield.       |
| Public Affairs.  |                                    |
| COOK, BENJAMIN A.,   | 15 Oliver Street, Fitchburg.       |
| Municipal Government.  |                                    |
| COOK, RUFUS H.,  | 45 Center Street, Northampton.     |
| Amendment and Codification of the Constitution.                      |                                    |
| COOLIDGE, LOUIS A.,  | 27 Canton Avenue, Milton.          |
| Bill of Rights.  |                                    |
| COOMBS, ZELOTES W.,  | 32 Richards Street, Worcester.     |
| Education ( <i>clerk</i> ).  |                                    |
| COONEY, CHARLES P.,  | 96 Washington Street, Peabody.     |
| Suffrage.  |                                    |
| CORRIGAN, ROBERT S.,   | 15 Union Street, Natick.           |
| Suffrage.  |                                    |
| COSTELLO, FRANCIS M.,  | 805 Parker Street, Roxbury.        |
| Judiciary.   |                                    |
| COUGHLAN, WILLIAM J.,  | 94 Sydney Street, Dorchester.      |
| Amendment and Codification of the Constitution.                      |                                    |
| COX, GUY W.,   | 1 Trinity Place, Boston.           |
| Taxation ( <i>chairman</i> ).  |                                    |
| CRAFTS, LYMAN A.,  | Whately.                           |
| County and District Government.                                      |                                    |
| Craven, John H.,   | 5 Sumner Place, Roxbury.           |
| State Administration.  |                                    |
| CREAMER, WALTER H.,  | 4 Prescott Road, Lynn.             |
| Taxation.  |                                    |
| CREED, JAMES F.,   | 20 Potosi Street, Dorchester.      |
| Amendment and Codification of the Constitution.                      |                                    |

- CROSBY, J. HOWELL, . . . . . 282 Mystic Street, Arlington.  
The General Court.
- CROSSLEY, WILLIAM CYRIL, . . . 1574 North Main Street, Fall River.  
Amendment and Codification of the Constitution.
- CUMMINGS, HERBERT E., . . . . Adams Street, North Brookfield.  
Education.
- CUMMINGS, JOHN W., . . . . . 533 Locust Street, Fall River.  
Initiative and Referendum (*chairman*).
- CURTIS, ARTHUR B., . . . . . 178 Campbell Avenue, Revere.  
Contingent Expenses and Pay-Roll (*chairman*).
- CURTIS, CHARLES P., Jr., . . . . . 6 West Hill Place, Boston.  
Municipal Government (*clerk*).
- CURTIS, EDWIN U., . . . . . 131 Bay State Road, Boston.  
Rules and Procedure, Bill of Rights (*chairman*).
- CURTISS, ELMER L., . . . . . 104 Main Street, Hingham.  
State Administration.
- CUSICK, JOHN F., . . . . . 21 Chamberlain Street, Dorchester.  
Judiciary.
- DALE, GEORGE H., . . . . . 654 Main Street, Watertown.  
Executive.
- DALEY, PETER, . . . . . 203 Broadway Street, Lowell.  
Social Welfare.
- DALY, JOHN W., . . . . . 76 Andrews Street, Lowell.  
Education.
- DAVIS, ELBRIDGE G., . . . . . 179 Glenwood Street, Malden.  
Judiciary.
- DAVIS, WILLIAM R., . . . . . 349 Broadway, Cambridge.  
County and District Government.
- DAY, CHARLES M., . . . . . 439 Central Street, Winchendon.  
Social Welfare.
- DEAN, ROBERT A., . . . . . 252 Highland Avenue, Fall River.  
Elections.
- DELANEY, LOUIS F., . . . . . 825 High Street, Holyoke.  
Social Welfare.
- DELANO, ROBERT T., . . . . . 175 High Street, Wareham.  
County and District Government.
- DELLINGER, RAYMOND P., . . . . . Shumway Circle, Wakefield.  
State Finance.
- DERBYSHIRE, JAMES H., . . . . . 45 Milton Street, Lawrence.  
County and District Government.
- DOE, ORESTES T., . . . . . 29 School Street, Franklin.  
Bill of Rights.
- DONNELLY, JAMES P., . . . . . 38 Foster Street, Lawrence.  
Education.
- DONOGHUE, JOHN A., . . . . . 110 West Canton Street, Boston.  
Taxation.

- DONOVAN, DANIEL R., . . . . 21 Sanford Street, Springfield.  
Social Insurance.
- DONOVAN, JAMES A., . . . . 61 Bradford Street, Lawrence.  
Labor.
- DONOVAN, THOMAS F., . . . . 24 Pelham Street, Boston.  
Military Affairs.
- DORAN, JAMES P., . . . . 76 Bedford Street, New Bedford.  
Amendment and Codification of the Constitution.
- DOUGLASS, JOHN J., . . . . 128 Havre Street, East Boston.  
State Finance.
- DRESSER, FRANK F., . . . . 26 Fruit Street, Worcester.  
Judiciary.
- DRISCOLL, DENNIS D., . . . . 110 Wayland Street, Dorchester.  
Initiative and Referendum.
- DRISCOLL, TIMOTHY J., . . . . 134 Vernon Street, Roxbury.  
Elections.
- DUTCH, CHARLES FREDERICK, . . . . 4 Brooks Street, Winchester.  
State Administration.
- ELLIS, THEODORE W., . . . . 39 Mulberry Street, Springfield.  
Form and Phraseology.
- FARNSWORTH, FRANK S., . . . . 78 Orchard Street, Leominster.  
Social Insurance.
- FEIKER, WILLIAM H., . . . . 1 Main Street, F., Northampton.  
Taxation.
- FERREY, IRVING D., . . . . 32 West Housatonic Street, Pittsfield.  
State Finance.
- FERRY, JAMES R., . . . . 48 Main Street, Northbridge.  
Suffrage.
- FINN, E. PHILIP, . . . . 51 County Road, Chelsea.  
State Finance.
- FISHER, EDWARD, . . . . Depot Street, Westford.  
The General Court.
- FITZ-RANDOLPH, REGINALD T., . . . 1 Willard Street, Nantucket.  
Taxation.
- FLAHERTY, WILLIAM, . . . . 20 West Broadway, South Boston.  
Social Welfare.
- FLYE, LOUIS EDWIN, . . . . Snell Street, Holbrook.  
Taxation.
- FLYNN, MAURICE R., . . . . 27 Winthrop Street, Malden.  
Executive.
- FOSS, GEORGE H., . . . . 530 Sumner Avenue, Springfield.  
Education.
- FRASER, EUGENE B., . . . . 8 Sanderson Avenue, Lynn.  
Public Affairs.
- FRENCH, ASA P., . . . . Main Street, Randolph.  
Judicial Procedure.

- FROST, ARCHIE N., . . . . . 80 Knox Street, Lawrence.  
Public Affairs.
- GALLAGHER, DANIEL J., . . . . . 17 Ocean Street, South Boston.  
Suffrage.
- GARLAND, FRANCIS P., . . . . . 90 Central Street, Somerville.  
Amendment and Codification of the Constitution.
- GARTLAND, JOHN J., . . . . . 10 Bond Street, Boston.  
The General Court.
- GATES, JOSEPH S., . . . . . 14 Phillips Street, Westborough.  
Executive (*clerk*).
- GAYLORD, HENRY E., . . . . . 118 Main Street, South Hadley.  
The General Court.
- GEORGE, SAMUEL W., . . . . . 45 Highland Avenue, Haverhill.  
Elections (*chairman*), Rules and Procedure.
- GIDDINGS, CHARLES, . . . . . Cottage Street, Great Barrington.  
The General Court (*clerk*).
- GLAZIER, FREDERICK P., . . . . . 12 Lincoln Street, Hudson.  
Social Welfare.
- GLEASON, NESBIT G., . . . . . 104 Main Street, Andover.  
Social Insurance.
- GOOD, JOHN P., . . . . . 106 Oxford Street, Cambridge.  
Taxation.
- GRANFIELD, WILLIAM J., . . . . . 145 Tenth Street, Springfield.  
Executive.
- GRAUMANN, JOHN, . . . . . 4 Cotton Street, Roslindale.  
State Finance.
- GREEN, THOMAS H., . . . . . 117 Baldwin Street, Charlestown.  
Elections.
- GREENWOOD, HAMLET S., . . . . . 12 Greendale Avenue, Lowell.  
State Administration.
- HAINES, BENJAMIN F., . . . . . 52 Central Avenue, Medford.  
Municipal Government.
- HALE, EDWARD R., . . . . . 85 Arlington Street, Haverhill.  
County and District Government.
- HALE, MATTHEW, . . . . . 9 Charles River Square, Boston.  
Initiative and Referendum (*clerk*).
- HALL, ELISHA S., . . . . . 155 East Main Street, Orange.  
Liquor Traffic.
- HALL, FREDERICK S., . . . . . 57 Winthrop Street, Taunton.  
Rules and Procedure, Municipal Government (*chairman*).
- HALL, ISAAC FREEMAN, . . . . . 45 Montana Street, North Adams.  
Education.
- HAMILTON, ANDREW FOSTER, . . . . . 1447 Main Street, Athol.  
Judicial Procedure.
- HARDING, CLARENCE W., . . . . . 350 School Street, Whitman.  
Liquor Traffic.



- HARRIMAN, ARTHUR N., . . . 169 Rockland Street, New Bedford.  
Initiative and Referendum.
- HARRINGTON, PATRICK H., . . . 97 Elm Street, Fall River.  
County and District Government.
- HART, ALBERT BUSHNELL, . . . 19 Craigie Street, Cambridge.  
Amendment and Codification of the Constitution (*chairman*).
- HAWLEY, TRUMAN R., . . . 26 Glen Street, Malden.  
Suffrage (*clerk*).
- HIBBARD, CHARLES E., . . . 211 North Street, Pittsfield.  
Rules and Procedure, Judicial Procedure.
- HICKS, GEORGE H., . . . 1973 South Main Street, Fall River.  
Municipal Government.
- HOBBS, CLARENCE W., Jr., . . . 224 Park Avenue, Worcester.  
Public Affairs (*clerk*), Form and Phraseology.
- HOITT, AUGUSTUS J., . . . 13 Henry Avenue, Lynn.  
State Finance.
- HORGAN, FRANCIS J., . . . 352 Arborway, Boston.  
Amendment and Codification of the Constitution.
- HOWARD, CHARLES P., . . . 122 Summer Avenue, Reading.  
County and District Government.
- HUTCHINGS, HENRY M., . . . 120 Court Street, Dedham.  
Judicial Procedure.
- JOHNSON, CHARLES R., . . . 3 Norwood Street, Worcester.  
Judicial Procedure.
- JONES, GEORGE R., . . . 63 Prospect Street, Melrose.  
County and District Government.
- KELIHER, JOHN A., . . . 80 Fenway, Boston.  
County and District Government.
- KELLEY, GEORGE W., . . . 300 Liberty Street, Rockland.  
Social Welfare.
- KELLEY, THOMAS R., . . . 691 Bennington Street, East Boston.  
County and District Government.
- KELLY, LUKE L., . . . 30 Boylston Street, Jamaica Plain.  
Education.
- KENEFICK, THOMAS W., . . . 28 Knox Street, Palmer.  
Judicial Procedure.
- KENNY, HERBERT A., . . . 102 Winthrop Street, Roxbury.  
Military Affairs.
- KERR, ALEXANDER, . . . 133 Hawthorne Street, Malden.  
Liquor Traffic.
- KILBON, JOHN L., . . . 820 State Street, Springfield.  
Social Welfare.
- KINNEY, WILLIAM S., . . . 284 Huntington Avenue, Boston.  
The General Court.
- KNEIL, ARTHUR S., . . . 40 Tekoa Terrace, Westfield.  
Suffrage.

- KNOTTS, J. FRANKLIN, . . . . 1 Powder House Terrace, Somerville.  
Liquor Traffic.
- LANE, DANIEL W., . . . . . 291 Beacon Street, Boston.  
Liquor Traffic.
- LANE, DWIGHT F., . . . . . Centre Street, Dighton.  
County and District Government.
- LANGELIER, LOUIS F. R., . . . . . 16 Lunt Street, Quincy.  
State Administration (*clerk*).
- LARSON, CHARLES G., . . . . . 18 Upsala Street, Worcester.  
Social Welfare.
- LEBOEUF, TELESOPHORE, . . . . . 6 Wakefield Street, Webster.  
Military Affairs.
- LEONARD, JOSEPH J., . . . . . 9 Carolina Avenue, Roslindale.  
State Finance.
- LINKE, FRED R., . . . . . Boise Street, West Springfield.  
Education.
- LOGAN, JAMES, . . . . . 222 Salisbury Street, Worcester.  
Municipal Government.
- LOMASNEY, MARTIN M., . . . . . 27 McLean Street, Boston.  
Bill of Rights.
- LOOK, WILLIAM J., . . . . . Spring Street, Tisbury.  
Public Affairs.
- LORING, AUGUSTUS P., . . . . . 44 Thissel Street, Beverly.  
Form and Phrascology (*chairman*).
- LOVE, JOSEPH A., . . . . . 34 East Main Street, Webster.  
Executive.
- LOWE, ARTHUR H., . . . . . 863 Main Street, Fitchburg.  
State Finance.
- LOWELL, JAMES A., . . . . . 517 Hammond Street, Newton.  
Labor (*chairman*).
- LUCE, ROBERT, . . . . . 33 Harris Street, Waltham.  
Rules and Procedure, The General Court.
- LUFKIN, WILLFRED W., . . . . . Winthrop Street, Essex.  
Executive.
- LUMMUS, HENRY T., . . . . . 11 Wolcott Road, Lynn.  
Initiative and Referendum.
- LYMAN, FRANK E., . . . . . Florence Street, Easthampton.  
County and District Government.
- LYNCH, JOHN C., . . . . . 305 Main Street, Milford.  
Taxation.
- MACMASTER, EDWARD A., . . . . . Central Square, Bridgewater.  
Judicial Procedure.
- MAGUIRE, JAMES E., . . . . . 41 St. Andrew Road, Boston.  
Judiciary.
- MAHONEY, JOHN J., . . . . . 8 Monument Square, Charlestown.  
State Administration.

- MALONE, DANA,<sup>1</sup> . . . . . 463 Main Street, Greenfield.  
Rules and Procedure, The General Court (*chairman*).
- MANCOVITZ, DAVID, . . . . . 150 Bowdoin Street, Boston.  
County and District Government (*clerk*).
- MANSFIELD, JOHN J., . . . . . 336 Dudley Street, Roxbury.  
Executive.
- MARSHALL, DANIEL J., . . . . . 61 Prospect Street, Worcester.  
Military Affairs (*clerk*).
- MARTIN, DANIEL A., . . . . . 123 Walnut Street, Holyoke.  
Suffrage.
- MARTIN, MARTIN L., . . . . . 199 West Fifth Street, South Boston.  
Municipal Government.
- MCANARNEY, JOHN W., . . . . . 37 South Street, Quincy.  
Judiciary.
- MCCAFFREY, GEORGE H., Jr., . . . . . 185 Thornton Street, Roxbury.  
State Finance (*clerk*).
- MCCARTHY, CHARLES F., . . . . . 64 Florence Street, Marlborough.  
Military Affairs.
- MCCORMACK, JOHN W., . . . . . 29 Mt. Vernon Street, Dorchester.  
Form and Phraseology.
- MCIISAAC, DANIEL V., . . . . . 159 Dorchester Street, South Boston.  
Amendment and Codification of the Constitution.
- 3 MCKEON, FRANCIS P., . . . . . 597 Cambridge Street, Worcester.  
Executive.
- McLAUD, ABNER S., . . . . . 26 Crescent Street, Greenfield.  
Public Affairs.
- MERRIAM, JOHN M., . . . . . 60 Union Avenue, Framingham.  
Judiciary.
- MERRILL, GEORGE FRYE, . . . . . 29 Pleasant Street, Gloucester.  
Bill of Rights.
- MICHELMAN, JOSEPH, . . . . . 35 Waldeck Street, Dorchester.  
Public Affairs.
- MITCHELL, CHARLES, . . . . . 20 Maple View Terrace, New Bedford.  
Judicial Procedure.
- MITCHELL, JOHN, . . . . . 145 Bond Street, Springfield.  
Liquor Traffic.
- MONTAGUE, DAVID T., . . . . . 154 Huntington Avenue, Boston.  
Judiciary.
- MOORE, CHARLES D. C., . . . . . 250 Burrill Street, Swampscott.  
Elections.
- MORAN, WILLIAM, . . . . . 48 Ridge Street, Fall River.  
The General Court.
- MORIARTY, JAMES T., . . . . . 280 Dorchester Street, Boston.  
Liquor Traffic.

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<sup>1</sup> Died August 13, 1917.

- MORRILL, CHARLES H., . . . . 23 North Broadway, Haverhill.  
The General Court.
- MORTON, JAMES M., . . . . 487 Rock Street, Fall River.  
Judiciary (*chairman*).
- MOYNIHAN, JAMES J., . . . . 23 Adams Street, Dorchester.  
The General Court.
- MURLEY, JOSEPH J., . . . . 89 Bennington Street, East Boston.  
Judicial Procedure.
- MURPHY, JOHN L., . . . . 90 Marginal Street, Chelsea.  
Social Welfare.
- MYRON, JOHN F., . . . . 43 Longfellow Street, Dorchester.  
Social Insurance.
- NESTOR, PATRICK F., . . . . 348 Stackpole Street, Lowell.  
Contingent Expenses and Pay-Roll.
- NEWHALL, ARTHUR N., . . . . 50 Gould Street, Stoneham.  
Military Affairs.
- NEWTON, H. HUESTIS, . . . . 92 Waverly Street, Everett.  
Suffrage (*chairman*).
- NUTTING, EDWARD H., . . . . 134 Spruce Street, Leominster.  
Executive.
- O'CONNELL, JOHN J., . . . . 61 Newhall Street, Lowell.  
State Finance.
- O'CONNELL, JOHN P., . . . . 10 Howard Street, Salem.  
Social Insurance.
- O'CONNELL, JOSEPH F., . . . . 13 Bowdoin Street, Dorchester.  
Taxation.
- O'CONNOR, JOHN D., . . . . 52 Emmet Street, Chicopee.  
Amendment and Codification of the Constitution.
- PARKER, GEORGE S., . . . . 36 Fairmount Street, Dorchester.  
Public Affairs.
- PARKER, HERBERT, . . . . Sterling Road, Lancaster.  
Rules and Procedure, Initiative and Referendum.
- PARKMAN, HENRY, . . . . 30 Commonwealth Avenue, Boston.  
State Finance (*chairman*).
- PEIRCE, ALBION G., . . . . 15 Pleasant Street, Methuen.  
Education.
- PELLETIER, JOSEPH C., . . . . 849 Beacon Street, Boston.  
Rules and Procedure, Bill of Rights.
- PERRY, AUGUSTUS W., . . . . 31 Rockwell Street, Dorchester.  
Elections.
- PETERSON, PATRICK, . . . . 25 First Street, Brockton.  
Elections.
- PILLSBURY, ALBERT E., . . . . Woodlawn Avenue, Wellesley.  
Rules and Procedure, Judicial Procedure (*chairman*).
- POWERS, SAMUEL L., . . . . 96 Arlington Street, Newton.  
Rules and Procedure, Initiative and Referendum.

- PUTNAM, HARRY B., . . . . . 89 Court Street, Westfield.  
State Finance.
- QUINCY, JOSIAH, . . . . . 4 Charles River Square, Boston.  
Rules and Procedure, Executive (*chairman*).
- QUINN, TIMOTHY F., . . . . . South Main Street, Sharon.  
The General Court.
- RAY, HERBERT L., . . . . . Sutton.  
Elections.
- REIDY, MICHAEL J., . . . . . 4 Harvest Terrace, Dorchester.  
The General Court.
- RICHARDSON, EDWARD A., . . . . . 6 Washington Street, Ayer.  
Taxation.
- RICHARDSON, JAMES P., . . . . . 598 Walnut Street, Newton.  
Amendment and Codification of the Constitution.
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Executive.
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State Administration.
- ROBINSON, GEORGE H., . . . . . Main Street, Sturbridge.  
Public Affairs.
- ROSS, SAMUEL, . . . . . 68 Willis Street, New Bedford.  
Rules and Procedure, Labor.
- RUSSELL, WALTER F.,<sup>1</sup> . . . . . 41 L Street, Brockton.
- SAUNDERS, AMOS T., . . . . . Bourne Street, Clinton.  
Social Insurance.
- SAWYER, ROLAND D., . . . . . 235 West Main Street, Ware.  
Suffrage.
- SCIGLIANO, ALFRED P., . . . . . 144 North Street, Boston.  
Labor.
- SHANAHAN, WILLIAM J., . . . . . 86 Belmont Street, Somerville.  
Taxation.
- SHATTUCK, JOSIAH B., . . . . . 309 Lincoln Street, Worcester.  
Labor.
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Taxation.
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Judiciary.
- SHEA, JOHN T., . . . . . 129 Fresh Pond Parkway, Cambridge.  
Labor.
- SHEEHAN, CHRISTOPHER A., . . . . . 75 Moore Street, East Boston.  
Military Affairs.
- SHERBURNE, NELSON, . . . . . 66 Main Street, West Springfield.  
Initiative and Referendum.
- SKERRETT, MARK N., . . . . . 641 Grafton Street, Worcester.  
Labor.

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<sup>1</sup> Died June 22, 1917.

- SMITH, JEROME S., . . . . Commercial Street, Provincetown.  
The General Court.
- SMITH, RUTHERFORD E., . . . . Lowell Street, Lynnfield.  
Judicial Procedure (*clerk*).
- SPARRELL, ERNEST H., . . . . Central Street, Norwell.  
Social Welfare.
- STEARNS, HARRY N., . . . . 16 Avon Street, Cambridge.  
State Administration.
- STOEBER, CHARLES, . . . . 70 North Summer Street, Adams.  
Bill of Rights.
- STONEMAN, DAVID, . . . . 24 Brookledge Street, Roxbury.  
Judiciary (*clerk*).
- SULLIVAN, EDMUND G., . . . . 15 Naples Road, Salem.  
Judiciary.
- SULLIVAN, JOSEPH M., . . . . 6 Adams Street, Charlestown.  
Liquor Traffic.
- SULLIVAN, MICHAEL A., . . . . 97 Knox Street, Lawrence.  
Amendment and Codification of the Constitution.
- SULLIVAN, WILLIAM H., . . . . 23 Wait Street, Roxbury.  
Bill of Rights.
- SULLIVAN, WILLIAM J., . . . . 47 Princeton Street, East Boston.  
Labor.
- SWEENEY, EDWARD A., . . . . 7 North Main Street, Attleboro.  
Social Insurance.
- SWEET, JOSEPH L., . . . . 42 Peck Street, Attleboro.  
Social Welfare.
- SWIG, LOUIS, . . . . 14 Exeter Street, Taunton.  
Bill of Rights.
- TALBOT, HARRY R., . . . . 1 Talbot Terrace, Plymouth.  
Labor (*clerk*).
- TATMAN, CHARLES T., . . . . 242 Salisbury Street, Worcester.  
The General Court.
- THELLER, RALPH L., . . . . 29 Seventh Street, New Bedford.  
State Finance.
- THOMPSON, EDWARD, . . . . 238 Essex Street, Beverly.  
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- THOMPSON, HUBERT C., . . . . 31 Belmont Avenue, Haverhill.  
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- THOMPSON, JOHN L., . . . . 107 High Street, North Attleborough.  
Labor.
- TILTON, RUFUS H., . . . . 336 Central Street, Springfield.  
Taxation (*clerk*).
- TREFRY, WILLIAM D. T., . . . 187 Washington Street, Marblehead.  
Taxation.
- TURNER, JOSEPH, . . . . 73 Grove Street, Fall River.  
Public Affairs.

- TWOMEY, JOHN C., . . . . . 180 Park Street, Lawrence.  
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- WALCOTT, ROBERT, . . . . . 38 Hubbard Park Road, Cambridge.  
Bill of Rights.
- WALKER, GEORGE, . . . . . 122 Hathaway Street, New Bedford.  
Military Affairs.
- WALKER, JOSEPH, . . . . . 108 Upland Road, Brookline.  
Rules and Procedure, Initiative and Referendum.
- WALSH, DAVID I., . . . . . 520 Main Street, Fitchburg.  
Rules and Procedure, State Administration (*chairman*).
- WASHBURN, ALBERT H., . . . . . 17 Southwick Street, Middleborough.  
Amendment and Codification of the Constitution.
- WASHBURN, CHARLES G., . . . . . 44 Elm Street, Worcester.  
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- WATERMAN, GEORGE B., . . . . . 14 Southworth Street, Williamstown.  
State Administration.
- WEBSTER, FRANCIS E., . . . . . 54 Lyman Street, Waltham.  
Bill of Rights.
- WEBSTER, GEORGE P., . . . . . 15 Washington Avenue, Haverhill.  
Suffrage.
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Social Welfare (*clerk*).
- WELLMAN, ARTHUR HOLBROOK, . . . . . Salem Road, Topsfield.  
Education (*chairman*).
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Education.
- WHEELOCK, HENRY H., . . . . . 28 Cherry Street, Fitchburg.  
Military Affairs.
- WHIPPLE, SHERMAN L., . . . . . Warren Street, Brookline.  
Rules and Procedure, Initiative and Referendum.
- WHITE, JOHN A., . . . . . Summer Street, North Brookfield.  
Elections.
- WHITEHEAD, JAMES, . . . . . 1188 Globe Street, Fall River.  
State Administration.
- WHITTIER, EUGENE P., . . . . . 799 Shirley Street, Winthrop.  
Education.
- WILLETT, GEORGE FRANKLIN, . . . . . 305 Walpole Street, Norwood.  
State Administration.
- WILLIAMS, FRED HOMER, . . . . . 41 Coolidge Street, Brookline.  
Rules and Procedure, Judiciary.
- WILSON, WILLIAM H., . . . . . 811 Westford Street, Lowell.  
Judiciary.
- WING, HERBERT, . . . . . Russells Mills Road, Dartmouth.  
Suffrage.

- WINSLOW, GUY M., . . . . 145 Woodland Road, Newton.  
Education.
- WONSON, CARLTON W., . . . 90A Mt. Pleasant Avenue, Gloucester.  
Contingent Expenses and Pay-Roll (*clerk*).
- WOOD, CHARLES J., . . . . 63 Magazine Street, Cambridge.  
Social Insurance.
- YOUNGMAN, WILLIAM S., . . . . 10 Orkney Road, Brighton.  
Initiative and Referendum.



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Mr. WALSH, Fitchburg.	Mr. UNDERHILL, Somerville.
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Mr. EDWIN U. CURTIS, Boston.	Mr. C. G. WASHBURN, Worcester.
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#### Mr. EDWIN U. CURTIS of Boston.

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Mr. GAYLORD, South Hadley.	Mr. J. S. SMITH, Provincetown.
Mr. REIDY, Boston.	Mr. MOYNIHAN, Boston.

<sup>1</sup> Died August 13, 1917.

<sup>2</sup> In place of Hon. Dana Malone.

<sup>3</sup> Clerk.

## ON INITIATIVE AND REFERENDUM.

Mr. CUMMINGS of Fall River.

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Mr. ROSS, New Bedford.	Mr. SCIGLIANO, Boston.
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Mr. JOHNSON, Worcester.	Mr. BASSETT, Taunton.
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Mr. HUTCHINGS, Dedham.	Mr. MURLEY, Boston.

<sup>1</sup> Clerk.

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Mr. A. H. WASHBURN, Middlebor- ough.	Mr. HORGAN, <sup>1</sup> Boston.
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## ON ELECTIONS.

Mr. GEORGE of Haverhill.

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## ON CONTINGENT EXPENSES AND PAY-ROLL.

Mr. ARTHUR B. CURTIS of Revere.

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Mr. BLACKMUR, Quincy.	Mr. McCORMACK, Boston.
Mr. BARTLETT, Newburyport.	Mr. HOBBS, <sup>2</sup> Worcester.
Mr. ELLIS, <sup>2</sup> Springfield.	

<sup>1</sup> Clerk.<sup>2</sup> Resigned August 22, 1917.<sup>3</sup> In the place of Hon. Theodore W. Ellis.

## MONITORS OF THE CONVENTION.

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